

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

JOINT APPENDIX

IN THE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,956

875

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 968, ET AL.,
Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

RED BALL MOTOR FREIGHT, INC.,
Intervenor.

No. 17,994

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

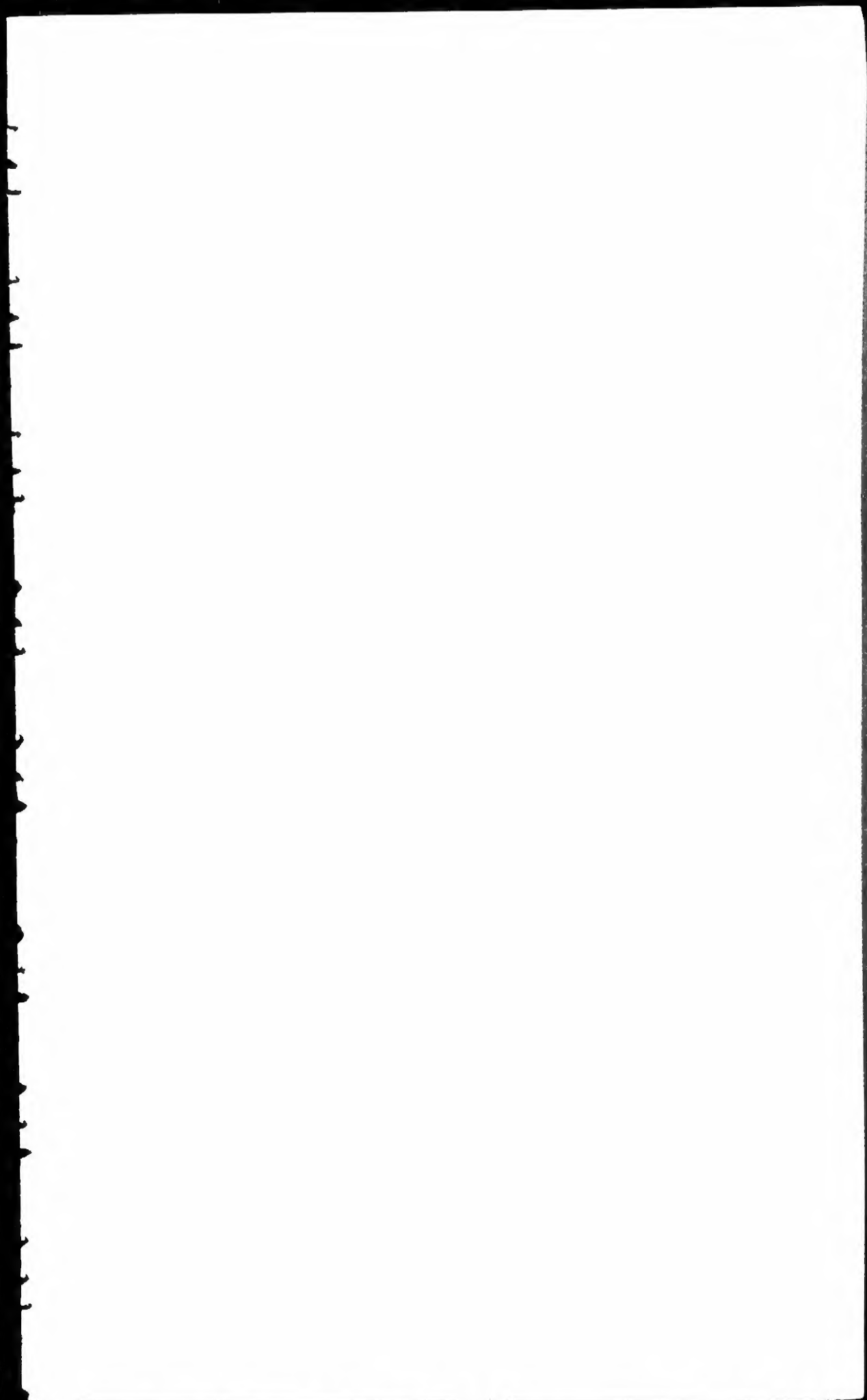
RED BALL MOTOR FREIGHT, INC.,
Respondent.

On Petition to Review and Set Aside and on
Cross-Application for Enforcement of an Order of the
National Labor Relations Board

United States Court of Appeals
for the ~~District~~ District of Columbia Circuit

FILED NOV 21 1963

Nathan J. Paulson
CLERK



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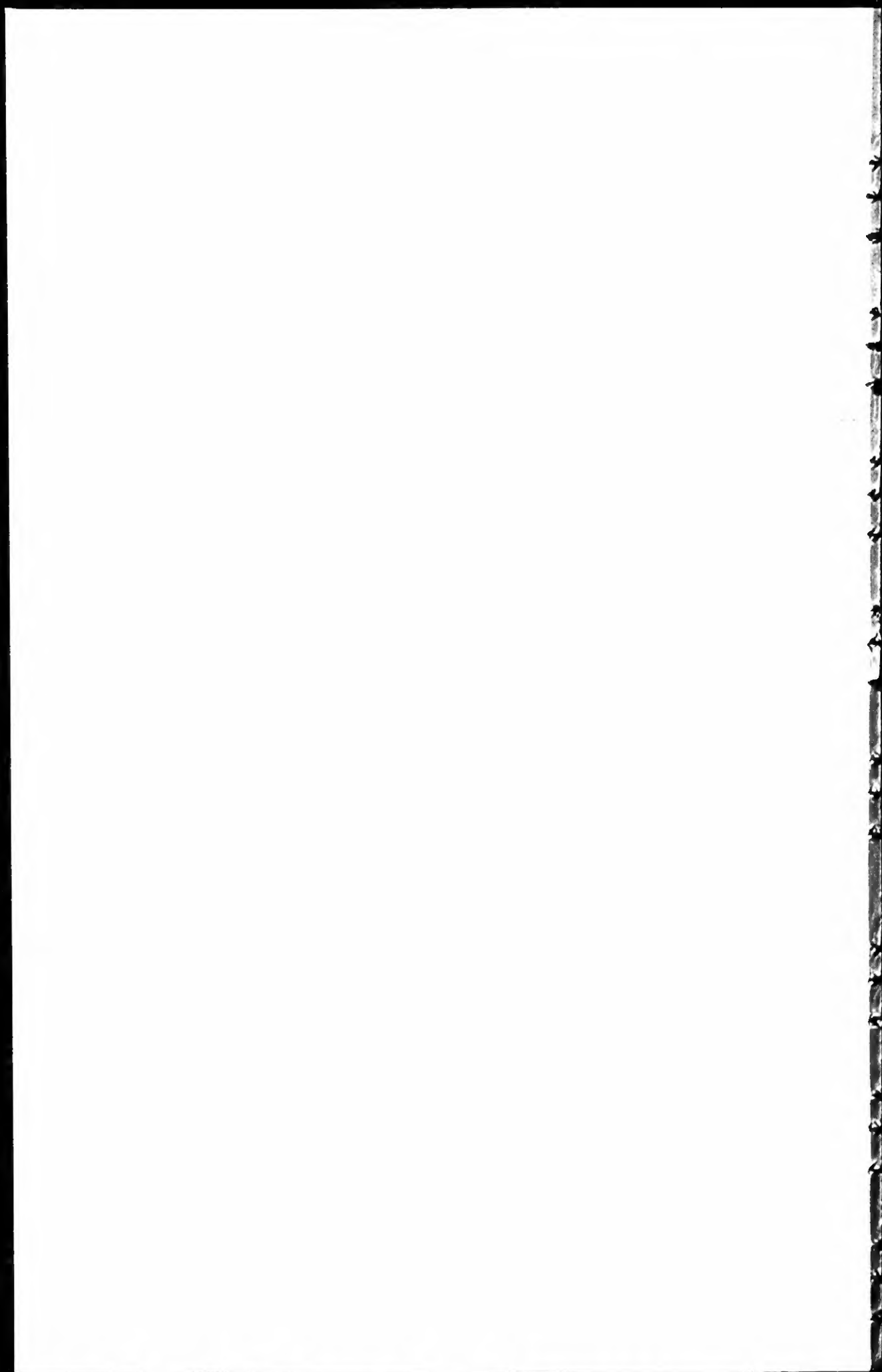
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**OFFICIAL REPORT OF PROCEEDINGS
BEFORE THE
NATIONAL LABOR RELATIONS BOARD**

BEFORE:

HORACE A. RUCKEL, Esq., Trial Examiner.

APPEARANCES:

JEROME L. AVEDON, Esq., 6617 Federal Office Building,
515 Rusk, Houston 2, Texas,
appearing as counsel for General Counsel.

CHARLES D. MATHEWS, Esq., General Counsel and Vice-
President of Red Ball Motor
Freight, Inc., P. O. Box 10837,
Dallas, Texas; and

ALLEN P. SCHOOLFIELD, JR., 1200 Republic National Bank
Esq., Building, Dallas, Texas; both
appearing on behalf of the
Respondent.

MULLINAX, WELLS, MORRIS & 1601 National Bankers Life
MAUZY, Building, Dallas, Texas, ap-
By: DAVID R. RICHARDS, Esq. pearing on behalf of the
Charging Party.

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Mr. Avedon: All right.

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Actually, all of the activity that we are alleging takes place in 1961 and 1962, but the fundamental dispute goes back to the late 40's and early 50's.

In that connection, I would like to call the Trial Examiner's attention to a matter before the Board involving Red Ball. I would like the Trial Examiner to take administra-

tive notice of this case, and the title of it is Red Arrow Motor Freight Lines, 77 NLRB 859, which ordered an 8(a)(2), found an 8(a)(2) violation of a union then in effect with a broad order against Red Ball Motor Freight.

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Mr. Avedon: 979, and then at 213 Red. 2d 260 is a finding by the Fifth Circuit discussing the formation of the U.T.E., and whether it was assisted or furthered by Red Ball and these other carriers.

Mr. Schoolfield: They said it wasn't, didn't they?

Mr. Avedon: They said it wasn't.

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Trial Examiner: Well, I have made a note of these. I

don't know how relevant they will turn out to be. If the company has complied with the recommended order of the Trial Examiner back in 1953, I feel that should be the end of that particular matter.

• • • • •

Mr. Avedon: I think it's got something to do with it in that we are going to show that certain of the supporters of

Hester who ran against Craig were immediately—certain action was taken against them, including warning notices which were not given to other employees, which subsequently were referred to when these people were discharged here in 1962.

• • • • •

Red Ball Motor Freight, Inc. is a Delaware corporation and a common carrier motor carrier that starts in Denver,

Colorado, and at present runs with a subsidiary corporation clear to—

Mr. Mathews: It runs on the east to New Orleans, Louisiana, Mobile, Alabama, Jackson, Mississippi, Memphis, Tennessee, Little Rock, Arkansas.

Trial Examiner: You appear to be engaged in interstate commerce.

Mr. Schoolfield: Yes, we agree with that.

Now, we have about ten union contracts. We have the U.T.E. contract. We have the Teamsters contracts from Amarillo to Denver, Amarillo, Texas, to Denver, Colorado. We have a Machinists contract in Denver. We have Teamsters contracts Shreveport east into Mobile, Alabama, and to New Orleans.

Well, we have ten or twelve contracts in all. And a great majority of these are Teamsters contracts.

Mr. Avedon: Wasn't this from areas that were purchased from other carriers and you assumed the Teamsters contracts at the time?

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Mr. Schoolfield: That is basically true, yes.

Now, there was an election in December of 1961 in which two unions fought a battle. The independent U.T.E. won this election for the Texas Division, roughly, of Red Ball Motor Freight. This election was certified by the Board.

The counsel for the General Counsel has mentioned some intra-union squabble in which one man ran for president and didn't win, or two men ran for president and only one of them won.

I will bring out that he has mentioned a name of a Mr. Hester. Mr. Hester's case of termination was arbitrated and won. Secondly, as has been happening for the past fifteen years, a charge was filed with the National Labor Relations Board on Mr. Hester in Fort Worth, which was dismissed for lack of merit.

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Mr. Schoolfield: We have some seventy-five terminal operations, each one having a terminal manager.

We have our general offices that are in Dallas, controlling over ten thousand miles of certificated routes.

We have some 1,500 to 1,800 employees, and this is a problem with us, and I think it's something that we would like for the record to show. We will, of course, show it in more detail later.

* * * * *

Mr. Mathews: I will be willing for them to have it. I just want to correct certain things now.

* * * * *

Mr. Avedon: You will stipulate.

From what I understand, in Paragraph 5 you will stipulate that Charles E. Fisk—

Mr. Schoolfield: Charles E. Fisk is a supervisor.

Mr. Avedon: All right.

And Dale Scruggs?

Mr. Schoolfield: Is a supervisor.

Mr. Avedon: And John W. Barr?

Mr. Schoolfield: Supervisor.

Mr. Avedon: And Harold Odom?

Are these jobs right, by the way, that we have listed?

Mr. Schoolfield: Charles E. Fisk is vice-president and operations manager, isn't he?

Mr. Mathews: That's correct.

Mr. Schoolfield: Dale Scruggs is Central Dispatcher. That is for the line.

Mr. Mathews: That's correct.

Mr. Schoolfield: Central Line Dispatcher.

John W. Barr is Safety Director. Harold Odom is superintendent of maintenance.

Mr. Avedon: You will stipulate that he is a supervisor?

Mr. Schoolfield: Oh, yes.

Mr. Avedon: O.K.

Mr. Schoolfield: Ted O. Lane is now our terminal manager is Amarillo, Texas. He was and has been terminal manager in Dallas.

Mr. Avedon: From February through approximately when did he assume his—

Mr. Mathews: First day of August.

Mr. Avedon: From sometime in February to August he was the Dallas terminal manager?

Mr. Mathews: That's right. Prior to that time he was terminal manager in Shreveport for a short time.

* * * * *

Mr. Avedon: Yes, I haven't seen this, myself.

I mean, I don't know personally, but I assume—I will stipulate that on the 12th of December of '61 that this certificate of representation was issued by the Fort Worth office.

Mr. Schoolfield: And we are not recognizing U.T.E. illegally?

Mr. Avedon: I make no contentions to that.

Mr. Schoolfield: That is fine.

* * * * *

Mr. Mathews: Mr. Examiner, it's stipulated that Exhibit GC-16 reflects that Horace Limbaugh, L-i-m-b-a-u-g-h, was the observer for the Teamsters Union, and T. L. Foster was the observer for U.T.E. Exhibit 16 relating to Fort Worth.

It is further stipulated that Exhibit GC-17, which relates to the election at Dallas, that it reflects that William Clem, C-l-e-m, Gordon S. Hodgins, H-o-d-g-i-n-s, and Joe Shamblin, S-h-a-m-b-l-i-n, were the observers for the Teamsters

Union, and C. L. Guthrie and C. T. Lyons, L-y-o-n-s, were the observers for the U.T.E.

It is further stipulated that Exhibit GC-18, which relates to Houston, reflects that W. T. Willingham and H. E. Nichols were the observers for the Teamsters, and that Robert L. Shanklin, S-h-a-n-k-l-i-n, and W. D. Phillips were the observers for U.T.E.

It is further stipulated that Exhibit GC-19, which relates to the conduct of election at Shreveport, Louisiana, reflects that Robert L. Johns and J. C. Boydston were the

observers for the U.T.E. Union, and there is no one shown on No. 19 as having been designated for the Teamsters.

Mr. Avedon: No one having served.

Mr. Mathews: Having served.

It is further stipulated that, with respect to Exhibit No. GC-29, which relates to the conduct of the election at Beaumont, Texas, that it shows M. A. Butler as the observer for the Teamsters Union and John Kibideaux, Jr., as the observer for the U.T.E.

Trial Examiner: Is that stipulated to?

Mr. Avedon: I think there is one slight thing that should be corrected.

On GC-17, it does not show Shamblin appearing. His name is not signed to it. We will, however, show that he was an observer for the Teamsters, but on GC-17 his names is now signed in, so I think you might want to correct your stipulation.

Mr. Matthews: If I stated that Exhibit GC-17 showed Joe Shamblin's name, it was an error. It does not show. But we will stipulate with you that he was an abserver at Dallas for the Teamsters Union.

Mr. Avedon: Fine. That solves that in case there is any question.

And can we also stipulate that these five locations were the only five locations where observers appeared in this

election, and that at the other locations mail ballots were used?

Mr. Schoolfield: Your exhibit will show it.

Mr. Avedon: I think the exhibit will show that, that's right.

At this time General Counsel would like to call W. T. Willingham.

Whereupon,

W. T. WILLINGHAM

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Avedon) Will you state your name and address for the reporter, please? A. W. T. Willingham, 2501 Hardwick, Houston.

Mr. Mathews: What was the street?

The Witness: 2501 Hardwick.

Q. (By Mr. Avedon) When did you start working at Red Ball? A. About eight years ago.

Q. And who hired you at the time? A. Mr.—it would be Mr. Moss.

Q. When you started working for Red Ball what was your job? A. Well, be for a while I was city pick-up driver and I started driving on the road, it would be extra.

Q. Did your job change—did you ever have your job changed to a city pick-up driver? A. Well, yes, I had, I don't know, about five or six months ago—

Q. No, let me withdraw that question.

Were you subsequently made a gas man? A. Well, yes.

Q. When did you become a gas man? A. Oh, the date, I don't know the date.

Q. About when? A. Oh, about, now, about a year ago.

Q. About a year ago, And what were the duties of the gas man? A. Well, gassing up them tractors and backing them trailers around in the yard up to the docks, things like that.

Q. Who switched you to the job of being gas man? A. Well, Mr. Simpson, I thought Mr. Simpson did.

Q. And what was his job, do you know? A. We always said he was Assistant Manager.

Q. As the gas man would you come into daily contact with many of the drivers? A. Well, yes, all of them, as far as that is concerned.

Q. 1961 the Teamsters Union started an organizing campaign in Houston, didn't they? A. Yes, sir.

Mr. Schoolfield: I would like to object to that, leading the witness. If the witness is going to give testimony, let him testify.

Mr. Avedon: This is merely preliminary.

Mr. Schoolfield: If he knows when the Teamsters started their campaign, if it was in 1840, he should testify.

Trial Examiner: Objection sustained.

Q. (By Mr. Avedon) All right. Did the Teamsters Union start organizing Red Ball's employees? Yes.

Q. When did they do that? A. Well, I would say, oh, about a year ago.

Q. Were you active in this organizing campaign? A. Yes, sir.

Q. What action did you take? A. Well, I tried to get the boys to sign up, you know, in other words, vote for the Teamsters.

Q. Did you talk to any employees? A. Well, yes, sir, every one I could.

Q. And did you distribute any cards? What other activities did you do on behalf of the Teamsters? A. Well, I

got, you know, them to sign them cards, gave some out, things like that.

Q. Did any of the employees sign cards for you? A. Yes, sir.

Q. Now, prior to the election—when was the election held? A. To be the date, I couldn't tell you the date.

Mr. Avedon: Could we get a stipulation that the election was held November 30 and December 1? I think we have got that on the record already.

Mr. Schoolfield: That would be my judgment. You have got the tally of ballots.

Mr. Avedon: Yes.

Q. (By Mr. Avedon) Prior to the election was your job changed? A. Well, yes, they changed me from gas man, put me back in town picking up again.

Q. When did they change your job?

Mr. Schoolfield: I would like to object to this line of questioning unless some materiality is shown to this hearing. If we are charged with discriminating against this man on job changes, it doesn't so indicate in the complaint.

Trial Examiner: Well, let's get the history of his employment.

Q. (By Mr. Avedon) When did they change you from a gas man? A. I would say about two weeks before the election.

Q. And what job were you given? A. City pick-up.

Q. And who gave you this job? A. Well, you might say Mr. Simpson gave it to me.

Q. The man who had been the gas man, how long had he held that job, do you know? A. About eight or ten years.

Q. And as a city driver were you in contact with the drivers? A. Well, yes, sir.

Q. In the same fashion that you had been as a gas man?
A. No.

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Q. As a result of your change in jobs, was there any change in your organizing activity? A. No. If I could talk to anybody I talked to them.

Q. Were you able to talk to anybody? A. I didn't have nobody to talk to except myself.

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Q. Did Mr. Simpson ever have a talk with you about the Teamsters? A. Well, I say I had a talk with him, you know.

Q. All right. A. I say two or three different times.

Q. What was Mr. Simpson's job at the time? A. Well, the same as he is now.

Q. What was that? A. Be assistant agent.

Q. All right.

Can you give me approximately the date of this? Was this before or after the election? A. Well, it was before the election.

Q. All right. What did Mr. Simpson say?

Trial Examiner: Was anyone else there besides you and Mr. Simpson?

The Witness: Well, yes, sir, there were.

Trial Examiner: Huh?

The Witness: Sure, there were some more there.

Trial Examiner: Well, I mean, that you think could hear?

The Witness: Oh, no, sir, they couldn't hear.

Trial Examiner: All right.

Q. (By Mr. Avedon) Would you tell me what you said, what Mr. Simpson said? A. Well, Mr. Simpson, I think

that in '48 when they had that other campaign, and he told me then they lost and it would be this time we were going to lose, and I would be sorry in the long run and we talked, oh, you know, about different things. He told me there at Red Ball they don't have to have no reason to run a man off, they can make up one.

Q. Was anything said about whether you supported the

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Teamsters or not? A. Well, no, sir.

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A. Well, that marble down there was laying down flat and I had to call Mr. Foster about, oh, I say about three times, you know, explaining how it was, you know, if it

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was damaged it would be up to the waterfront, if it wasn't it would be up to Red Ball.

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Trial Examiner: What time did you get back there?

The Witness: Oh, I would say between 5:00 and 5:15, 5:30, somewhere along in there.

Well, I got back to the terminal, I was standing out there in the hall, and Mr. Simpson came by then and said Mr. Foster wanted to see me. So I went in his office and the first thing he asked me was about that marble.

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Trial Examiner: Asked you what?

The Witness: About that marble I picked up at the waterfront.

Q. (By Mr. Avedon) Would you speak out so everybody can hear you?

Trial Examiner: What did he say about it?

The Witness: Well, he asked me, well, actually, you might say, did I get it, how was it loaded, and things like that. Well, I told him it still laid down flat in the truck, and he told me he was going to go out there and look at it after a while, so we stood around in there and talked about that marble, and then he said to sit down, Mr. Barr had something he wanted to play to me, it was a tape recording he wanted to play to me. So on that tape recording Mr. Barr said I was, I believe first I was cutting in and out of traffic, and next I was following a trailer too close.

Trial Examiner: What is this about a tape recorder? I am afraid I don't understand.

The Witness: Well, I don't know, Mr. Barr played it to me there in Foster's office.

Mr. Avedon: What happened, as far as I understand it, is that Mr. Barr had a tape recording which he played to the witness after getting back in the terminal of certain things that he put into the tape recorder.

Q. (By Mr. Avedon) Is that right? A. That's right.

Q. And what did this tape recording contain? A. Well, he said I was cutting in and out of traffic.

Q. Was that on the tape recording? A. Yes, sir, that was on the tape recording. He said I was cutting in and out of traffic, and I was following a truck too close, and I run a stop sign.

Q. Did he say anything else about what you were doing?

A. That was all.

Q. All right.

Trial Examiner: Did he say whose voice this was on the tape recording?

The Witness: Well, it was supposed to have been Mr. Barr's.

Trial Examiner: That was your understanding?

The Witness: Yes, sir.

Q. (By Mr. Avedon) Was anything said about speed or rate of speed? A. Oh, yes, speeding.

Q. What was it? A. He said on McCarty I was doing 45 in a 40-mile per hour zone.

Q. All right.

Did Mr. Foster say anything to you after this tape recording was played?

A. Yes, he asked me, "Bill, if you was me, what would you do?"

I said, "Well, fire me."

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Q. All right.

After this conversation on the 9th, did you subsequently meet with any additional Red Ball officials after that? A. Well, not right then. I called Tadlock that night.

Q. Who is Tadlock? A. Well, that is Mr. Craig's—well, I don't know what you would call him.

Q. Well, he is an official of the U.T.E.? A. That's right.

Q. All right.

And did you subsequently meet with any company officials with Tadlock? A. Well, on the 10th, the next morning, I did, yes.

Q. All right. Will you tell us where that was? A. Well, it was in Red Ball's office.

Q. Who was present? A. Mr. Foster and Mr. Barr and Tadlock and Mr. Simpson.

Q. All right. Would you tell me what was said by every-

body that was there? A. Well, it was approximately the same thing as the night before.

Q. Would you tell me what was said, please, what each man said? A. Well, be word for word I can't tell you because I don't know.

Q. As best you can recall. A. Well, Tadlock asked Mr. Barr, you know, about all that, and Mr. Barr told him, you know, what I have done, running those red lights, stop signs and speeding, and Tadlock asked Mr. Foster would he rehire me and he said no, that, in other words, he's be let it stand like it is until be word out of the general office come down and said Mr. Barr was out of the general office, and he said he would let it stand like that.

Q. Did you say anything at this meeting about your activity? A. Well, yes, I asked Mr. Barr being the time, you know, he said he be at City 18 at 1:00 o'clock, be 1:45, if I ain't mistaken, so I left there, you might say, approximately 4:30, so I asked Mr. Barr, I said, "Well, you had been waiting on me for three and a half hours." He said, "Yes."

Then he turned right back around and changed, he changed his word, said then, "For any Red Ball truck."

Trial Examiner: Said what?

The Witness: It would be for three and a half hours, I asked him did he wait on me, and he said, "Yes."

In other words, he turned around and said, "For any Red Ball truck that come out of the city, north side."

Q. (By Mr. Avedon) How many Red Ball trucks were on the north side at that time, if you know? A. Two, two of us.

Q. Two. Did Mr. Barr say how long he had been waiting? A. Well, I asked him that.

Q. Yes. And how long did he say? A. Well, I don't think he said any length of time.

Q. Did he say when he had started waiting? A. Well, he said he seen my truck down there at 1:45.

Q. And he said he had waited—

Mr. Schoolfield: I would like to object to leading the witness. It's most important that he not be led.

Trial Examiner: Don't lead him.

Q. (By Mr. Avedon) Would you repeat again what you said to Mr. Barr and what Mr. Barr said to you? A. Well, in the office we were there talking, and I asked Mr. Barr, "Then for three and a half hours you waited on me down at City 18."

He said, "Yes." And then he turned right back around and said, "For any Red Ball truck that came out."

And at that time there wasn't but two Red Ball trucks down there, and that was me and Deadhead Brown, being as I know.

Trial Examiner: This meeting in the office, how did that come to take place, did you ask for it?

The Witness: Well, yes, sir.

Trial Examiner: Who did you ask?

The Witness: Well, it be Tadlock, that is that representative, be for the U.T.E. He went out and told Mr. Foster and them the next morning, about 10:00 o'clock, I believe.

Trial Examiner: And so Tadlock arranged this meeting?

The Witness: Yes.

Trial Examiner: Were you and the company officials in the office?

The Witness: That's right, yes, sir.

Q. (By Mr. Avedon) At this meeting did you say anything about whether you had committed these violations? A. Well, I said I didn't.

Q. At this meeting was anything said about the contract being violated? A. Oh, yes, Tadlock said they broke the contract in three different places by firing me the way they did, be on the 9th when they fired me, he was supposed to have Tadlock or a representative be in the office there when they fired me.

Well, they were in such a hurry to fire me that they didn't ask for Tadlock or nobody.

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Q. (By Mr. Avedon) During this period of time while you worked for Red Ball had you ever received a written warning from the company for speeding? A. No.

Q. For reckless driving? A. No.

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Q. Or for improper operation of a vehicle? A. No.

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Direct Examination

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Q. All right, sir.

Now, I take it your testimony about accidents, if I understand it, is that it had been some almost three years since you had had an accident with Red Ball equipment, is that correct? A. That's right, yes, sir.

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Cross Examination

Q. (By Mr. Schoolfield) Mr. Willingham, have you ever been convicted of a felony? A. No.

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Q. Did you have an accident on April 5, 1962? A. Well, not as I recall, no.

Q. You mean any kind of an accident, you are talking about? A. Chargeable accident.

Q. You are talking only about chargeable accidents? A. Right.

Trial Examiner: What kind of accidents?

Mr. Schoolfield: Chargeable accidents.

Trial Examiner: Oh.

Q. (By Mr. Schoolfield) Is that what you meant in your testimony? A. Yes.

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Mr. Mathews: It's a trade term and you are chargeable if you are held in a negligence case, a civil action, and the company has to pay as a result of your driver alleged to be operating negligently and the company has to pay. He may not be charged criminally.

Trial Examiner: That is your understanding of chargeable?

The Witness: Yes, sir.

Q. (By Mr. Schoolfield) Now, do you recall a talk or interview with Mr. Simpson in March of 1962 in reference to speed? A. Well, yes, on the yard out there, yeah.

Q. What was that about, tell us? A. Well, we came on

the yard out there and they had a radar out there, or whatever you call it, and, I don't know, a day or two later, Mr. Simpson called me in the office and said I was speeding out there, and about eighty-five per cent of us was.

Q. Who said that? A. Simpson, Mr. Simpson.

Q. What did he say to you? A. Well, he said I was speeding on the yard out there.

Q. All right, sir. What did you say to him? A. Well, I told him I might have did.

Q. What did he say to you? A. That is all.

Q. And that is all that was said? A. To be general, yes. He told me not to do it no more.

Q. And what did you say to him? A. I told him I wouldn't.

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Q. And you are testifying that there was only one other Red Ball truck there while you were there at this dock?

A. I said that is the only one I seen, only one I noticed about.

Q. I see.

There could have been others up there in that area and

you wouldn't have noticed it? A. It could have been, yes, sir.

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Redirect Examination

Q. (By Mr. Aevdon) You mentioned Mr. Simpson had said something about speeding? A. Well, yes, on the yard.

Q. Is this on the company yard? A. Yes, sir.

Q. What did Mr. Simpson say about speeding? A. Well, he said I was speeding and we talked a little bit about it, asked me, you know, if I was. I told him I probably was.

Q. You said something about eighty-five per cent. A. Well, that is the statement he made, said most of us was speeding, about eighty-five per cent of us.

Q. Mr. Simpson said eighty-five percent of the drivers on the yard were speeding? A. That is when they came on the yard that night.

Q. And he clocked them by radar? A. No, he didn't say that. They were clocked by radar, that is what he said.

Q. That is what he said? A. He didn't say who done it.

Q. No, but he said they had been clocked by radar? A. Yes, sir.

Q. And that eighty-five per cent of the drivers in the yard were speeding? A. Yes, sir.

Trial Examiner: Is there a speed limit in the yard?

The Witness; Yes, sir, I think they have got a fifteen mile an hour, no sir, ten mile an hour sign up as you go through the gate.

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Direct Examination

Q. (By Mr. Avedon) Would you state your name for the reporter and your address? A. H. E. Nichols, 10940 Royal Pine, Houston 16, Texas.

Q. When did you start working for Red Ball? A. Almost ten years ago, I believe it to be about October 21.

Q. Who hired you? A. 1952. Mr. Moss.

Q. 1952, is that— A. Yes, sir.

Q. And did you subsequently become a line driver? A. Yes, sir.

Q. When did you become a line driver? A. In February 1956.

* * * * *

Q. Since 1958 have you been working regularly for Red Ball? A. Yes, sir.

Q. As what job? A. Line driver.

Q. Did you undertake any activity on behalf of the Teamsters Union? A. I did.

Q. When? A. I started actively in 1956.

Q. Did you subsequently in either '60 or '61 or '62 undertake any activity for the Teamsters Union? A. I did. I signed a card in October 1960.

Q. What activity did you undertake for the Teamsters Union? A. Talking to the men, trying to get them to sign up and support the Teamsters.

Q. In 1960 were you doing any organizing work for the Teamsters? A. I was.

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The Witness: 1960. Crump in Beaumont was on vacation. On Friday night Charley White pulled this run up to Huntsville, back to Beaumont, and back to Houston. The next Friday night they called me to pull the same run.

Fields, the dispatcher, told me I would pull the run when he called me.

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Q. (By Mr. Avedon) How are drivers paid, line drivers?
A. By the mile, and on tonnage.

Q. And what determines their earnings? A. Well, mileage.

Q. Would their runs affect their income? A. Yes.

Q. In other words, in what way? A. Well, it depends on how many miles we run, like from here to Beaumont doesn't pay half as much as from here to Dallas or some place like that.

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Q. (By Mr. Avedon) Have you ever seen this? A. Yes.
Trial Examiner: What is this, now?

Mr. Avedon: GC-22, marked for identification.

Q. (By Mr. Avedon) Would you identify that, please?
A. I wrote this and turned it over to the Teamsters and they reproduced it and mailed it out.

I have had several drivers to tell me they received copies of this through the mail.

Q. Was this mailed as a general mailing by the Teamsters? A. Yes, sir.

Q. Do you know when that was? A. It was just before the election. The election was November 30 and December 1, 1961.

Q. This was used by the Teamsters as campaign material, is that it? A. Yes, sir.

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Mr. Avedon: This shows the company's knowledge of his activity on behalf of the Teamsters.

Mr. Mathews: Mr. Examiner, it certainly doesn't.

Trial Examiner: No, it certainly doesn't. The document, itself, does not show that. This is something which you drafted, is that it, Mr. Witness?

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Q. Would you tell us in what way that would be done?

A. Well, a lot of times he might have me set up on, say, for instance, a Dallas run, and, say, for instance, a Texarkana run might come up, he might change me to a Texarkana run.

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Trial Examiner: Mr. Witness, now, to get back to this document marked General Counsel's 22, this purports to be a quotation from a letter which you wrote, is it?

The Witness: Yes, sir.

Trial Examiner: A letter which you wrote and circulated among the employees?

The Witness: Yes, sir, I wrote it to them.

Trial Examiner: Now, at the time you wrote that letter and circulated it among the employees, and that part is in quotes, then I take it when that happened, the last paragraph, which is in caps on here was not a part of what you sent around, that is, "The above is a reproduction of a letter from Hall C. Nichols, an employee of Redball Motor Freight Lines"?

The Witness: Yes, sir, that was on the letter.

Trial Examiner: It was on it?

The Witness: Uh-huh.

Trial Examiner: In other words, you are sort of quoting yourself?

The Witness: Yes, sir. I wrote the letter. Then they rewrote it and put that at the bottom.

Trial Examiner: Who is they?

The Witness: The Teamsters. I sent it to Dallas to the Teamsters Union.

Trial Examiner: To the Union?

The Witness: Yes, sir, so it could be mailed out.

Trial Examiner: Then the Union circulated this?

The Witness: Yes, sir.

Trial Examiner: And gave you credit for it, so to speak, in this last paragraph?

The Witness: Uh-huh.

Trial Examiner: Now, when Mr. Fields spoke with you, did he have a copy of this?

The Witness: He said that he read part of it, but I don't think he ever mentioned whether he had received it or not.

Trial Examiner: Do you know whether he mentioned how he happened to speak to you about it or not, did he say?

The Witness: Fields and I have been friends for a long time so I asked him whether he had saw the letter and he said yes, Mr. Simpson brought it in.

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Trial Examiner: When was this circulated, did you tell us?

The Witness: About the last week in November, 1961.

Trial Examiner: Before or after the election?

The Witness: Right before the election.

Trial Examiner: Just before the election?

The Witness: Uh-huh. I think I received my copy through the mail about three days before the election.

Q. (By Mr. Avedon) Directing your attention to March, 1962, did you make a run between Houston and Paris, Texas? A. I did.

Q. Would you give us the date on that? A. I don't recall exactly the date of the run. It was right before the—the runs were assigned around the last of March and I was still

on the Paris—I don't recall the exact date of it. I was pulling a regular run through there at the time.

Q. Did anything unusual occur on that run? A. On one particular run.

Q. Would you tell us what happened? A. Just south of Crockett I met Mr. Barr and Mr. Foster in the Company car that Mr. Barr uses, it's kind of a beige colored 1961 Chevrolet, and the license number is NT-8923. Soon after meeting them they turned around, made a U-turn in the

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highway, and started following me. They followed me on through Crockett about six or seven miles.

I needed to make a tire check and I pulled over, stopped to make a tire check, and they passed, and I saw for sure that it was Mr. Barr's car, and he and Mr. Foster were in it.

I continued on after making a tire check, and I met the car again headed back south in the direction of Houston.

The car made another U-turn and started following me again. And followed me through Grapevine on into Palestine and I went to the Palestine warehouse.

They came up to the warehouse and checked my log and my charts.

Trial Examiner: Did you see them?

The Witness: Yes, sir.

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Q. (By Mr. Avedon) Would you detail fully what happened at this time when they stopped you at the Palestine warehouse? A. I pulled up on the yard and backed up to the dock and the car pulled up behind me. I got out to see if they were in the way, and backed on up to the dock, and I always log up first thing before I stop, if the dome light is working in the tractor where I can see, and I turned on the dome light and started logging up, and Mr. Foster got in on

the right side, and he picked up my old log book and started going through it, and I glanced over at it, and noticed it was my old log book, and told him he could have my other log book as soon as I got through with it, and he wanted to know if I had anything to come off, and I told him I didn't, I had just stopped at the warehouse to check to see if there was any freight going out. I came back and he wanted to see my driver's license and ICC card.

Trial Examiner: He asked to see your driver's license?

The Witness: Yes, sir. I handed him my driver's license, my ICC card, and I told them that I knew who they were all the time, and about that time Harvey got down off the dock.

Q. (By Mr. Avedon) Who is Harvey? A. He is another line driver for Redball.

Q. When you say you knew who they were all the time, would you explain that? A. I knew the car and I knew that I was being followed.

Q. How long a distance had you been followed into Palestine? A. It takes approximately—it took me approximately an hour and a half from the time that I met them just south of Crockett until I left the Palestine warehouse. I was at the Palestine warehouse approximately twelve or

thirteen minutes.

Q. In other words, for an hour and fifteen minutes they had been following you, is that right? A. Yes, sir.

Q. Now, you said something about another driver getting off the dock. Would you continue? A. Harvey got down off the dock and I suppose they was checking Harvey when I left, but I had been gone approximately fifteen minutes and the car caught up with me again and it passed and it was Mr. Foster and Mr. Barr, and that was the last I saw of them that night. I don't know what happened to them, whether it turned off or went on, but I asked in Tyler when

I reached Tyler if they had came in there, and they said they hadn't saw anything of them.

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Q. And in the last, since the election, have any of these meetings been held? A. I recall attending three.

Q. All right. Who would talk at these meetings? A. These three that I have attended, Mr. Barr did most of the talking.

Q. Would the subject of speed be discussed at these meetings? A. Yes, sir.

Q. Would you tell us what would be said about speed?

Trial Examiner: By whom?

A. Well, he said—

Trial Examiner: Who, Mr. Barr?

The Witness: Mr. Barr said that speeding would not be tolerated and someone asked him at a meeting in Houston how fast Gordon Hodgins was driving in Corsicana. He said 35 and 30. And he said he checked him on his radar and followed him in his car.

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The Witness: It was May 7, 1962.

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Q. Did you ever hear Mr. Scruggs talk? A. Yes, sir, at one of these meetings that Mr. Scruggs was talking and he says that excessive speeds would not be tolerated and then he says speeds of this example, referring to a speed check that Dean had received driving—

Trial Examiner: Who?

The Witness: D. L. Dean. D. L. Dean had received a speed check driving 60 miles an hour. And he said: "Just to use you as an example, Dean," he says, but he had rather that we got up to 50 and better and pass than to tailgate.

Q. (By Mr. Avedon) Now, what is the speed limit in Texas for trucks? A. 45.

Q. On the road, that is open road speed. And did Mr. Barr ever talk about whether drivers could do more than 45? A. The first time that I recall attending a meeting that was held by Mr. Barr—

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Q. When would that be? A. In 1961. It was right after I had gone to Dallas to run out of there, it was either in May or June, he made the statement that the Company had laxed some on their speeds. Prior to then everyone had been running approximately 45. After that everyone speeded up to approximately 50.

Q. Is that what Mr. Barr said?

Trial Examiner: Did he say that was too fast or what?

The Witness: Sir?

Trial Examiner: What did he say about getting up to 50, if anything?

The Witness: He didn't say anything. He said that the Company had laxed some on their speeds, we had been sticking pretty close to 45 until then, and then everyone started to driving approximately 50.

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Q. In other words, do you drive in convoy on occasion?

A. Sometimes there's six or seven of them.

Q. And you follow them in line, is that it? A. Yes, sir.

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Q. Would you explain how a Tachograph operates and what it shows? A. I read a pamphlet that was in those White Freightliners. It has three needles on the inside. One cuts a little jagged line down at the bottom, it shows when a tractor is completely stopped. It will quit cutting

on this chart. And the other one shows the speeds and the one at the top, it will show the average speed.

Q. Would the charts show when the vehicle is driven more than a certain speed? A. Yes, sir.

Q. In other words, from a chart could you tell what speed a tractor was being driven? A. Yes, sir.

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Now, directing your attention to May 8, 1962, what run were you driving? A. I was pulling, I came out of Dallas to Houston that evening.

Q. All right. Did you spot any car that you recognized? A. Just north of Conroe I saw a car that looked like Mr. Barr's in a little roadside park before I reached the cafe, it was about a mile before I reached the cafe. I couldn't read the license number, it was sitting so far back, and I came on down to the cafe, I had plenty of time to get in, I knew they didn't go to work until 3:00 a. m., I spent forty-five minutes in the cafe. Then I proceeded on to Houston.

I reached a 40 mile an hour zone just north of Spring. I slowed down to 45 miles an hour. I always slow down there, anyway. I had traveled about a miles when I saw Mr. Barr's car coming from behind me.

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Q. How did you know it was Mr. Barr's car? A. I knew by his lights. I have never saw any other lights that are as perfect as these. And—

Q. In other words, is that the way the light falls, is that it? Explain that. A. It's kind of hard to explain. This is something that you see and you get a picture of it in your mind, and there wasn't one of them wasn't brighter than the other. They are both approximately the same.

Q. And after this car started following you what happened? A. He followed me on to Spring. There is a serv-

ice road that turns off at Spring and he turned off the service road, and when he went off I could see the color of his car, when it turned sideways.

Q. What was the color of the car? A. It was kind of a beige. Some refer to it as kind of a brown.

Q. What make? A. 1961 Chevrolet.

Q. And what kind of car does Mr. Barr drive? Have you ever seen Mr. Barr in a car that he was driving? A. This is the only car that I can recall ever seeing Mr. Barr in.

Q. The same color, and same model? A. Uh-huh.

Q. What happened then? A. He got off on the service road, but I never lost the car out of sight of the rearview mirror on the right side. Then the service road at the time ended just a little ways down there, and he fell back a pretty good distance, and then he would catch up, and fall back again. I believe, if I remember, from there to Houston, a distance of approximately ten or fifteen miles, there was only one other vehicle or car, I could see another pair of lights back there at the time all the way in to the end of the freeway.

Q. Now, is there a section of freeway within the City of Houston that you drive into coming from Dallas? A. Yes, sir.

Q. What are the posted speed limits on that road? A. 40 to 50.

Q. When you say that what do you mean? A. That is minimum 40, maximum 50.

Q. What speed did you drive on this freeway section? A. Between 40 and 50.

Q. Did you see Mr. Barr following you on this section of freeway? A. The same car followed me.

Q. Were you stopped on this occasion by any police officer or law enforcement officer? A. No, sir. I have always

driven the same speed. I had always driven the same speed on the freeway. And I have passed highway patrolmens and I have passed city policemens, and I have had them to pass me, and I have never been stopped on the freeway driving between 40 and 50.

Q. On this date did you arrive in the Houston terminal?

A. Yes, sir.

Q. What happened when you got to the terminal? A. Mr. Barr came up and stopped me, stopped beside of me, and he came around and opened the clock on the tractor and took the chart out and said he wanted to see me in the office.

Q. Did you see Mr. Barr in the office? A. Yes, sir.

Q. What did he say to you, what did you say to him? A. He says "Hall, what did I tell you all at the meeting the other night about speeding through these towns?"

And I asked him "Which town did I speed through?"

And he said "Out here on the freeway."

I says "Well, I drove within the posted speed limits."

And he said that speeds in excess of 45 were a violation of the law. And that speeds within the city would not be tolerated.

Q. Did you say anything to him? A. I told him, I says "Well, if you want me to drive 45 all the time, all you have

to say is drive 45 and I will drive 45."

Q. Was there anything else said? A. Yes.

Q. Tell us what. A. I told him it appeared to me that some of the supervisors were trying to run me off because I supported the Teamsters during the recent election, and he says "Has someone told you something?"

And I says "There's a lot of indications to make it appear that way."

And he says someone must have told me something to make me say that.

Then he says "Do you have a guilty conscience?"

And I told him no, I didn't have a guilty conscience about anything.

And he says "Back to this incident of you speeding out here on the freeway," and he says, "speeding will not be tolerated within the city limits," and he said he had had several other drivers in there, and I asked him if it was all right I would like to know who the other drivers were, and he says he had them in a meeting.

Trial Examiner: Said what?

The Witness: In a meeting. And he asked me what would I do if I was in his place, and I said it wasn't my place to

say, that I wasn't the safety supervisor. And he says, he asked me the same question again, and I didn't answer for a couple of minutes I suppose, approximately, and he got up and he asked me if I was too stupid to answer a simple question, that he wasn't going to sit there all night, to come back and see him before I run out the next night.

Q. At this time was anything said about other drivers?

A. I asked him what about the other drivers, there was three drivers that left Houston ahead of me, Kenneth Morley, Marlin Nichols and J. D. Palmer, and there were several other drivers had run out of Houston, and I asked him if I was the only one that he had checked.

Q. Did he answer that? A. No, sir.

Q. He didn't answer that? A. Not that I recall.

Q. Now, the next day did you see Mr. Barr?

Trial Examiner: Just a minute. You say the posted limit on the freeway in town is 40 to 50?

The Witness: Yes, sir.

Trial Examiner: I think you said 40 was the minimum?

The Witness: Yes, sir.

Trial Examiner: And 50 the maximum?

The Witness: Yes, sir.

Trial Examiner: I know what a maximum is but there's also a speed under which you are not supposed to go?

The Witness: Yes, sir.

Trial Examiner: That is 40?

The Witness: Yes, sir.

Mr. Mathews: Mr. Examiner, we will come to it, but by statute the posted speeds on freeways in Texas don't control for commercial vehicles. The statute controls.

Trial Examiner: Well, I am speaking now of the posted speed.

Mr. Mathews: And that has been covered in all of these safety meetings. We will come to it.

Trial Examiner: But the posted speed is minimum 40 and maximum 50?

The Witness: Yes, sir.

Trial Examiner: For trucks?

The Witness: It's for everything. It doesn't specify.

Trial Examiner: All right.

Q. (By Mr. Avedon) Let me ask you this, had this question about speeds on city freeways been discussed at any safety meetings? A. I don't recall.

Q. You don't recall. The next morning did you go into the terminal and talk to Mr. Barr? A. Yes, sir.

Q. Would you tell me what was said by Mr. Barr and what you said? A. Mr. Barr asked me if I had thought about what he told me, he told me the night before, and I told him I had, and I told him that I had talked to two other drivers and they both told me they had driven 50 on the freeway.

Q. Did you say anything else? A. Yes, sir, I told Mr. Barr that I thought he was being unfair and also that I had heard, one driver had told me that he and another driver went through Willis and neither one of them slowed down.

Q. Is Willis a town? A. Yes, sir.

Q. What did he say to that? A. And he said if they came through there speeding they got a warning letter.

Q. Did Mr. Barr say he was going to give you anything? A. Yes, sir, he told me he was going to send me two letters, one, failure to follow instructions, and the other one for speeding.

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Mr. Avedon: I am offering GC-26 in evidence.

Trial Examiner: What, because you like poetry?

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Mr. Avedon: No, I think it has a little bit more than that. It was posted in various company terminals, shortly after the discharge of Hodgins, one of the drivers we consider is an 8(3), that we consider was discharged for Union activities.

The language, I think, speaks for itself indicating a clear intent on the part of Company that don't rock the boat, and I think going far beyond that as to what people should or should not do while in the employ of Redball.

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Cross Examination

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Q. Is, to your knowledge, anyone else making more money or being treated better than you are on that score?

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A. There is.

Q. Who is that? A. There are several of them. Here within the last three months I know that I have caught local runs when I don't think I should have.

For instance, in July I caught a trip to Paris, Texas. I departed Houston two and a half hours after a Dallas man

did for Paris. I pulled the local run. He went straight up. It took me four and a half hours longer to pull my run, approximately, and I made approximately a dollar and a quarter an hour for that time.

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Q. Did you bring these matters to the attention of the Company where you thought you were not being treated fairly? A. No, sir.

Q. Then you haven't said anything to anybody about it? A. No, sir.

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A. I testified that I have driven in convoys, followed other drivers, when my speedometer showed 50, and I would be driving behind other drivers, and some of those drivers stayed in sight of me, but others disappeared and just went on, and I have driven 50 and other drivers passed me and just went on.

Q. When this happened did you bring this to the attention of the Company when you arrived at your destination? A. No, sir.

Q. You didn't mention it to anybody? A. Usually if I think my speedometer is off I will write it up.

Q. But did you mention that in your observation of other Redball drivers speeding and bring that to the attention of the Company? A. I have no way of knowing what their speedometers show.

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HORACE G. LIMBOUGH

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Avedon) Would you state your name and address for the record, please. A. Horace G. Limbough, 1413 Bruden Road, Mesquite, Texas.

Q. When did you start working at Red Ball Motor Freight? A. August 19, 1957.

Q. Who hired you? A. Frank Oxford.

Q. What is his job, what was his job at that time? A. He was terminal agent.

Q. Where? A. Dallas.

Q. And who has that job now—I'm sorry. What work were you hired for? A. At first I was hired for dock work.

Q. Yes. A. Then later on I was transferred into the pick-up department.

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Q. How long did you work on the dock? A. One year.

Q. Then you were transferred to what? A. Pickup.

Q. And who transferred you? A. Frank Oxford.

Q. What were your duties on pickup and delivery run? A. To deliver freight.

Q. Was that in a certain area? Was it a city delivery or was it over-the-road? A. City delivery.

Q. In the city of Dallas? A. Yes, sir.

Q. When you first started making city delivery runs did you have any accidents? A. I had one.

Q. How many did you have, one? A. I had one.

Q. What was the nature of the accident? A. I was on Commerce Street and we was pulling into a loading zone and there was a lady pulled up behind me in a new Plymouth convertible and I was backing up and backed into the front of her car.

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Q. Was it chargeable to you? A. Yes, sir.

Q. Did you have to pay on that? A. No, sir.

Mr. Schoolfield: Could we have a time established?

Q. (By Mr. Avedon) When was this accident? A. I don't recall.

Q. About what month or year? A. I don't know.

Trial Examiner: Do you know the year?

The Witness: It was in '58.

Q. (By Mr. Avedon) Were you given a warning as a result of this accident? A. No, sir, I was given a talking to.

Q. You weren't given a written warning? A. No, sir.

Q. Was any action taken against you? A. No, sir.

Q. Were you laid off or discharged? A. No, sir.

Q. Subsequent to that time were you given any safety award? A. Yes, sir.

Q. What years were you given safety awards for? A. 1959 to 1961.

Q. In other words, in the three years you were given three awards, is that right?

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Trial Examiner: At this point, gentlemen, I wonder if it wouldn't facilitate matters if the respondent could give the reason for terminating this witness?

Mr. Mathews: We never did terminate this old boy.

Mr. Avedon: We contend it was constructive discharge.

Trial Examiner: All right. Then the question I was going to ask would not be relevant. I just wondered.

Mr. Avedon: It has relevance. I think we will show the relevance of it as we go along.

Trial Examiner: If we could get right into the matter of his termination.

Mr. Avedon: All right.

Trial Examiner: And go back, then it would collect a little better in my mind.

Q. (By Mr. Avedon) In the years 1959, 1960 and 1961 you said you received safety awards for the three years, is that right? A. For two years.

Q. What do you say those safety awards mean? A. It means I was a safe driver in the year.

Q. That you did not have any chargeable accidents? A. Yes, sir.

Q. Did you become active in the Teamsters organizing campaign at Red Ball? A. Yes, sir.

Q. When was that? A. In November, I believe it was, last year, I believe then they started.

Q. And what activity did you undertake on behalf of the Teamsters? A. Signing the men up and observer for the Teamsters Union.

Q. That was where? A. In Fort Worth.

Q. In October of 1961 who was the terminal manager in Dallas? A. Julian Meeks.

Q. Do you know Jim Hitt? A. Yes, sir.

Q. In October of 1961 what was his job? A. In October Jim Hitt was a break-out foreman.

Q. What were his duties then? A. Supervise the men breaking out the bobtails as they came in every evening off of pickup.

Q. In October of 1961 did you have occasion to be called into Mr. Meeks' office? A. Yes, sir.

Q. When was this? A. In October.

Q. Do you know approximately what date it was? A. I

don't recall exactly what date.

Q. Who told you to go into the office? A. The dispatcher. I called him on the radio and he told me to call him by telephone at the next stop, and I did, and he told me to come in.

Q. Who is "he"? A. That is Sam Selby, the dispatcher.

Q. All right. A. And I came in and he said that Mr. Meeks wanted to talk to me, and I went in and Mr. Meeks called Jim Hitt in there, and I sat down and Jim Hitt claimed—

Trial Examiner: What did Mr. Hitt say?

The Witness: Mr. Hitt said that I had disobeyed one of

his orders the night before and I refused to work overtime so that he could let men with seniority go home, which I didn't. At the particular time I had two children that had measles and I asked him to go home—

Mr. Mathews: I'd like to strike this testimony. Let the witness testify to what was said.

Trial Examiner: Go back and tell us what you said and what Mr. Hitt said.

The Witness: And I said I didn't disobey his orders, and he said I did. And Mr. Meeks went on and talked to me about it, and he said he wouldn't stand for anybody to disobey his foremen. He told Mr. Hitt that in case of an emergency where men had sick folks he intended for him

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to let them go home. And Mr. Hitt, he said that I did my job all right. He said I was a good worker and all, and after the conclusion of this talk Mr. Meeks asked me if I minded him asking me a personal question, and I said no. And he said, "Are you for the Teamsters Union?"

And I said yes. And he went on to point out the disadvantages of the Teamsters Union, how crooked they were, and he said that if I mentioned this to anybody after I came out of his office that he would call me a liar and he would have Jim Hitt to back him up.

Q. (By Mr. Avedon) Was anything said at this meeting about people around you? A. Yes, sir. He said that he knew I was for the Teamsters Union, I didn't really have to tell him because many men had been standing around my car at night and me signing them up there would be no way for me not to know it.

Q. How did this conversation end? What did he say at the end of this conversation? A. He said that if I said anything about him asking me about this Teamsters Union he would call me a liar and he would have Jim Hitt for a witness to say that it wasn't so.

Q. Was anything else said? A. He said, "That will be

all." And he said, "Go on back out on the dock and go to work."

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Q. Did you say anything else after that? A. No, sir.

Trial Examiner: Mr. Meeks and Hitt together during this entire conversation?

The Witness: Yes, sir.

Trial Examiner: They were both there?

The Witness: Yes, sir.

Q. (By Mr. Avedon) Prior to the election did you have any conversation with Mr. Meeks about the election? A. Yes, Sir.

Q. When was that? A. I was breaking out a truck one night and he came back—

Mr. Mathews: May we have the time?

Q. (By Mr. Avedon) When was this? A. On what date?

Q. Or as close as you can approximate it. A. It was right before the election in December.

Trial Examiner: The election was when?

Mr. Avedon: December 30th.

The Witness: It was right before the election.

Trial Examiner: How long before the election?

The Witness: Two days before the election.

Q. (By Mr. Avedon) Where did this conversation take place? A. In the back of my truck, I was breaking a truck out and he came over and asked me if I was still for the Teamsters Union, and I said, "Yes," and he said, "I'll bet

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you they don't win."

Mr. Mathews: Who is "he," please?

The Witness: Mr. Meeks.

Q. (By Mr. Avedon) After the election did you speak to Mr. Meeks about the election? A. I did, I went into his office after the election.

Q. When was this? A. The election was held on Tuesday and I went into his office the next morning.

Trial Examiner: That would be what date, then, the day after the election?

The Witness: The election was held on Friday, we counted the votes on Monday, I believe, and I went into his office on Tuesday.

Trial Examiner: What date would that be?

Mr. Avedon: Tuesday would be the 5th of December, according to my calendar.

Q. (By Mr. Avedon) What did you say to him, what did he say to you? A. I told him that I had been for the Teamsters Union during the election and it was all over now, we had lost and I didn't have anything else to say about the Teamsters, that I would go on doing my job, performing it to the best of my ability and I wouldn't talk union any more. And he said that he thought I ought to go over and

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talk to Mr. Fisk.

Q. Who is Mr. Fisk? A. I know he's in the general office.

Q. In other words, was he above Mr. Meeks?

Mr. Mathews: This has been stipulated.

Trial Examiner: It's been stipulated that Charles Fisk is operating manager.

Q. (By Mr. Avedon) Did he tell you why he thought you ought to tell this conversation to Mr. Fisk? A. No, sir. He thought I ought to go over and talk to him.

Q. Between December of '61 and March of 1962 did you have any accidents? A. Yes, one.

Q. What kind of an accident was that? A. I was on a regular pickup and delivery run and I was picking up at 404 South Ervay.

Q. What was the date, do you know? A. It was on the 23rd, I believe it was.

Q. Of what month? A. March.

Q. Prior to that date from December did you have any accidents? A. Yes, sir.

Q. Between December? A. No, sir, I hadn't had any accidents between December and March.

Q. Were you given any warning about the way you were performing your duties between December and March of 1962? A. No, sir.

Q. You started saying something about this date in March, tell us what happened. A. I was on my regular pickup and delivery run and I was making a pickup at Ervay and I had pulled up to make my pickup and I was waiting for traffic to move on so I could get straight with the curb when the light turned green and I pulled up there and there was this kid, he was on a bicycle, he delivers blueprints around town here, and I backed over the front of his bicycle, the front wheel, and it was no damage, the kid wasn't hurt or anything. And I got out and this man was coming down the street yelling to me and I got out and the kid wasn't hurt so I went into the office there and I called the dispatcher. I talked to John Haslet.

Q. Is that the Red Ball dispatcher? A. He's in the dispatch room.

Q. What did you tell him? A. I told him that I had had an accident, and he said, "Is anybody hurt?" And I said no. And he said, "Get the boy's name and give him the information he needs and bring it on in and you can fill out the accident report."

Q. Did you tell them what had happened? A. I told them

that I had hit a boy's bicycle.

Q. Do you know what the bike repair was? A. \$8.19.

Q. Who told you that? A. Timekeeper out there.

Q. Do you know his name? A. Ray Howell.

Q. What did he tell you? A. He said the cost of the bicycle was \$8.19 damage.

Q. After this accident what did you do? A. After the accident I came in to work, I had the accident on Monday morning.

Q. No, did you finish that day? A. I came in that evening

and Ray Howell had gone home and I went in to make out an accident report. The dispatcher told me to wait until Ray Howell had come back the next morning to make out the accident report, which was on a Monday.

Q. Did you finish your regular run that day? A. Yes, sir.

Q. Was there any damage done to your truck? A. No, sir.

Q. Did you come in on Monday? A. Yes, sir.

Q. Had anything other than the wheel to the bicycle been damaged or anything, any other vehicle or anything like that? A. No, sir.

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Q. Was any other—were any persons hurt? A. No, sir.

Q. Did you make an accident report on that following Monday? A. I came in that Monday and I had forgotten about my accident report, and I went out on my delivery and the dispatcher called me on the radio and told me to come in and make the accident report, and I did.

Q. Was anything said at this time about the accident? A. No, sir, only that it was \$8.19 damage.

Q. Did you go back on your regular run after making out the accident report? A. Yes, sir.

Q. Did you complete your run that day? A. Yes, sir.

Q. When you got back to the terminal did anything happen? A. Yes, sir, my card was gone.

Q. Your timecard? A. Yes, sir.

Q. Did you speak to anybody about it? A. Yes, sir, I went in and spoke to Ted Lane about it.

Q. You spoke to Mr. Lane? A. Yes, sir.

Q. Where did this take place? A. At the Dallas Terminal.

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Q. Was it in his office or on the dock or where? A. It was in his office.

Q. Was anyone else there? A. He had somebody in his office and I asked him if he had my card, and he said "Yes, I'll talk to you later, I don't have time right now."

Q. You said you took it to Mr. Lane? A. Yes, sir, he said, "We'll get together and talk. Me and you need to have a talk."

Q. Did you see him that evening after this? A. Yes, sir, I seen him out on the dock.

Q. I mean did you talk—When was the next time you talked to Lane? A. The next morning.

Q. Where was this meeting? A. In his office.

A. Was anyone else present? A. No, sir.

Q. What was said by you and what was said by him? A. Mr. Lane called me in and he had my file folder in front of him and he pointed out that I had had this accident and he saw that I had had two previous accidents about two years before that, and he said that that was too many accidents and that this kid was complaining that he was hurt, and he said that he was going to have to suspend me.

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Q. What did you say to all this? A. And I said, "How long am I going to be suspended for this?"

Q. Did you tell them about the accident? A. I told him that the boy had pulled up under me with the bicycle and I had looked in my mirror and he had got right behind my truck and that I couldn't see him and I couldn't see the boy and I didn't feel like it was my fault.

Q. And then he said he was going to suspend you? A. He said, "I'm going to suspend you."

Q. What did you say to that? A. I said, "How long are you going to suspend me for?" And he said, "I can't tell you that."

Q. What did you say to that? A. I said, "Well, I've got to have some definite answer on how long I'm going to be suspended, I've got bills to pay and I need to know some date when I'll be called back."

And he said, "It's not up to me, it's up to the general office."

Q. Did you say anything to that? A. I said, "Can I go—what about working for some other line?" And he said, "It's Red Ball's policy that you don't work for any other company and work for us."

Q. What happened next? A. And he went in and got the typewriter and he typed up a letter stating that I, Horace

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G. Limbough, do resign effective immediately, and he brought the letter in and I said, "I hate to lose the seniority I got with Red Ball and I hate to leave."

And he said, "Just go on and sign the letter, Limbough."

And in the meantime he reached in the folder and pulled out my check.

Q. Had the check already been prepared? A. He had it typed up.

Q. The check had already been in the file? A. Yes, sir.

Q. Was anything said about union activity in this conversation? A. Yes, sir, I told him that the reason they were firing me was because of union activity and that was the reason, not because of the accident, and he said, "I don't know anything about that."

Q. Did Lane—who had decided on this suspension? A. He said it was out of the general office, that they wanted me suspended.

Q. Did you sign the letter? A. Yes, sir, I signed the letter.

Q. Did you intend to resign? A. No, sir, I didn't intend to resign, I feel like I resigned under pressure.

Mr. Mathews: I object to that and move that it be stricken.

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Trial Examiner: It will be stricken.

Q. (By Mr. Avedon) What was your reason for signing that letter? A. He never would tell me how long I was

going to be suspended, and I got a family to feed and I can't be out of work and sit at home and wait for him to call me to work. I had to go out and get another job.

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Cross Examination

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Q. Did you look to see if there was a bicycle there? A. I looked in my rearview mirrors, but the kid was directly behind my truck and his front wheel was right on my bumper guard of the truck, and when I started to back up his wheel was almost touching my truck and I backed over the front wheel of his bicycle and he was standing on the curb.

Q. He was standing on the curb? A. He was standing on the curb when I got out.

Q. Do I understand that when you first drove past the area—I take it you were driving forward along the street, was the bicycle there in the street at that time? A. Yes, sir.

Q. You checked it at that time? A. Yes, sir.

Q. Did you stop your vehicle? A. Yes, sir, I stopped, the light was red and the traffic had to move ahead of me so I could pull up and park.

Q. And of course, as I understand it, you have rearview mirrors on your cab?

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Q. (By Mr. Schoolfield) Mr. Limbough, you testified that you had an accident in December of 1958, is that right? A. Yes, sir.

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Trial Examiner: I don't believe the record shows clearly what chargeable means. Will counsel state what chargeable means?

Mr. Mathews: Chargeable accident, in my understanding, is an accident that could be prevented by the driver.

Trial Examiner: You agree to that for the Board?

Mr. Avedon: Does the company have a practice of assessing the driver a charge of the accident?

Mr. Mathews: A chargeable accident is one that could be prevented, and when you get into a lawsuit it's almost the same thing as unavoidable accident. It's chargeable in the sense of the law of negligence.

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Mr. Avedon: And the determination is made by the company. In other words, it's no independent finding. In other words, the company says this accident—

Mr. Mathews: That is not correct.

Mr. Avedon: Who makes the determination?

Mr. Mathews: The company is consulted, but as a last resort we rely on our adjusters.

Mr. Avedon: And they will decide whether a driver is negligent or not negligent?

Mr. Mathews: A lawyer concludes whether or not there is going to be company liability.

Trial Examiner: That is agreed to, then?

Mr. Avedon: I'll agree to that understanding.

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Q. (By Mr. Schoolfield) You had this accident in December of '58. When did you have your next accident? A. In 1959.

Q. What was that? A. I backed into a door down here on Powhatton Street.

Q. In 1959 you backed into a door? A. Yes, sir, I believe that is right.

Q. Did you have any other accidents after that? A. No, sir, except this one.

Q. That is the bicycle accident, that happened prior to your leaving Red Ball? A. Yes, sir.

Q. Did you have any accidents anywhere else? A. What do you mean by that?

Q. Well, did you ever have any other accidents with Red Ball equipment? A. I did have an accident with Red Ball equipment but on their lot, not involving two pieces of their equipment.

Q. Tell us about that, when was that? A. The date I don't really remember on that.

Q. What happened? A. I was backing out there, down

there at their old dock down here and another driver pulled in behind me and he was driving pretty fast and I backed into his fender.

Q. Did you accept responsibility for that? A. I accepted responsibility on that. I had to. He forced me to accept it.

Q. Who forced you to do what? A. Short Williams, J. S. Williams same as forced me to accept that accident.

Trial Examiner: I don't understand what that means. We don't want to try the merits of any situation.

Q. (By Mr. Schoolfield) Let me ask you a question and then give me an answer.

Did you accept responsibility for that accident? A. I did.

Q. When was the date of this accident on Red Ball's terminal? A. I don't know exactly.

Q. What year was it? A. In '59, I believe it was.

Q. Could it have been March 5, 1959? A. It could have been.

Q. Did you have any type of accident in June of '59 involving Red Ball equipment? A. Not that I recall.

Q. Did you have an accident in August of 1960?

Trial Examiner: Refresh his recollection, your records should show it.

Q. (By Mr. Schoolfield) Let me read from the records here and see if this refreshes your recollection.

On December 18, 1958, Red Ball driver backed into a passing truck that pulled up behind him in a parked position.

Is that your 1958 accident you testified to? A. Yes, sir.

Q. That is December 18, 1958. The damages here are \$10.97, but it was a backing accident, is that right? A. Yes, sir.

Q. March 5, 1959, while traveling across terminal ground adjacent to equipment at dock a Red Ball vehicle suddenly pulled from equipment line into passing Red Ball truck.

Is that the one in which you backed into a Red Ball truck on company property? A. It must be.

Mr. Avedon: What's the damage on that?

Mr. Schoolfield: Upon further investigation Horace Limbough has accepted the amount of \$9 to cover repairs.

The Witness: And it never was deducted.

Q. (By Mr. Schoolfield) But you authorized it? A. I authorized it.

Q. Count your blessings.

June 3, 1959, the other party was a Texas Delivery Service, foreign unit, overtook a Red Ball truck and damaged

rearview mirror. Do you recall that? A. Yes, sir, I recall that, but he came back and knocked my mirror off.

Mr. Avedon: What is the damage?

Mr. Schoolfield: It's not shown.

Q. (By Mr. Schoolfield) August 16, 1960, while pulling away from shippers' loading platform damaged Red Ball truck parked at loading platform. A. That is the Buhl Lumber truck. It's their fault.

Q. That was August 16, 1960? A. Yes, sir.

Q. February 2, 1961, while backing into a shippers' loading platform Red Ball truck struck and damaged partially closed overhead door. A. Down here on Powhatton.

Q. And that was February 2, 1961? A. Yes, sir.

Q. And the cost of that was \$45? A. I don't know what the cost was, I never was consulted.

Q. But you did back into a door? A. Yes, sir.

Trial Examiner: Was that chargeable?

Mr. Schoolfield: Yes, sir, any backing accident is chargeable.

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Q. (By Mr. Schoolfield) Then you had this last accident of March 3, 1962, which is the bicycle incident? A. Yes, sir.

Q. That was a backing accident? A. Yes, sir.

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Q. (By Mr. Schoolfield) Mr. Limbough, is it not true that the company's rule on backing equipment is that you must clear the area in back of a piece of equipment before you back up? A. Yes, sir.

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Q. All right, what did he say? A. He said, "That's too many accidents." He said, "That's too many."

Q. What did you say to that? A. I said, "Well, actually, I don't think it is." I did have safe driving awards with Red Ball but I have had accidents, too.

Q. What did he say to that? A. And he said, "Well, this accident here that you just had is more serious than you think, I'm going to have to suspend you."

Q. What did you say to that? A. I said, "For how long?"

Q. And what did he say? A. He said, "I don't know."

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Q. What did you say then? A. I said, "I've got to have some definite answer."

Q. What did he say to that? A. He said, "I can't give you one."

Q. What did you say? A. I said, "You can't even give me some sort of estimate how long I'll be off?"

Q. What did he say? A. He said, "I can't."

Q. What did you say? A. I said, "I have a family to feed and bills to pay and I can't just sit down and wait for you to call me."

And he said, "That's the way it is, I can't do anything about it."

Q. Then what did you say? A. I said, "In a case like this I'm going to have to look for another job."

Q. What did he say? A. He said, "It's a company rule that employees don't work anywhere else while they're working for Red Ball."

Q. Then what did you say? A. I said, "Well, I've got to do something."

He said, "Well, do you want to resign?"

And I said, "In a case like that I'll have to."

Q. What did he say then? A. He typed up his letter before me.

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Q. Then what did you say? A. I said, "Mr. Lane, I hate to give up my seniority with Red Ball."

Q. What did he say to that? A. He said, "Well, just go ahead and sign the letter."

Q. Then what did you say? A. I signed the letter and he reached in the file and got a check.

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Q. Have you ever been suspended before while working at Red Ball? A. No, sir.

Q. Do you know anybody that has been? A. Has been suspended?

Q. Yes. A. Well, I know some that has been.

Q. How long were they suspended for? A. Really, I don't know. I think the last one was suspended for about 30 days, I don't know.

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Q. When did you tell Mr. Lane that you might as well resign? A. When he refused to tell me how long I would be suspended.

Q. And then what did Mr. Lane do then? A. He went and typed up a letter.

Q. And that was when you signed it? A. He brought it back in and put it on the desk.

Q. He left the office? A. Yes, sir.

Q. He went into another room and then brought it back in? A. Yes, sir.

Q. And you signed it? A. I hesitated to sign the letter.

Q. What do you mean, you hesitated? What did you say to him? A. I went ahead and signed it.

Q. Did you say anything to him? A. No, sir.

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Redirect Examination

Q. (By Mr. Avedon) Who was your immediate supervisor when you were doing this city pickup and delivery run, who's in charge of your operation? A. It would have been Mr. Lane.

Q. He would have been your boss as far you're concerned? A. Yes, sir.

Q. Somewhere in this conversation your resignation was suggested. Who suggested it? A. He suggested the resignation after he refused to tell me for how long I would be suspended and I had to go along with it. He said the general office would tell me how long I would be suspended.

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Trial Examiner: After he said that only the general office could tell you how long you would be suspended, then that, I take it, would be Mr. Fisk, is that correct?

The Witness: Sir, I don't really know. Actually, he said it would be up to them. They would let him know and he would get in touch with me.

Trial Examiner: You were speaking to Mr. Lane at this time?

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Trial Examiner: What I want to know is what he said about the general office. That is what I want you to tell me. What was said?

The Witness: I asked him about that, he told me he couldn't tell me how long the definite suspension would be, and he said the general office would have to let him know and he would get in touch with me.

Trial Examiner: Did he say that he would get in touch with you?

The Witness: Yes, sir, he did.

Trial Examiner: What did you say after that?

The Witness: I told him that I couldn't accept that because they would never call me back.

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Mr. Avedon: The election was November 30, 1961.

Trial Examiner: You were an observer at that election?

The Witness: Yes, sir, in Fort Worth.

Trial Examiner: And I believe you stated before the election you did something for the union, what was that?

The Witness: I worked for the union, I helped sign the union up prior to the election.

Trial Examiner: What did you do, you signed men up?

The Witness: Yes, sir, I helped sign men up.

Trial Examiner: You signed your own application?

The Witness: I signed my own and tried to persuade other men to sign up, too.

Trial Examiner: Did you get any other application cards by other men?

The Witness: Yes, sir.

Trial Examiner: How many?

The Witness: I would say 50.

Trial Examiner: Around how many?

The Witness: Fifty.

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ELTON E. CATHEY

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Avedon) Would you talk out nice and clear, and state your name and address for the record. A. Elton E. Cathey, 803 Heath Street, Rockwall, Texas.

Q. Would you take your hand away from your mouth. When did you start working for Red Ball? A. September 28, 1959.

Q. Who hired you? A. Dale Scruggs.

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Trial Examiner: If he was fired, what was he fired for? Mr. Mathews: The man was discharged for abuse of the

equipment and failure to observe company rules and failure to care for company equipment.

Q. (By Mr. Avedon) In 1959 I think you said you had an accident? A. Right.

Q. What were the circumstances of that accident? A. It was up at the old terminal, the Greyhound bus station is over there. I went and got the hookup men to move the trailer so I could get out. He moved the trailer and I pulled out behind him and stopped and he backed up and when he backed up the corner of his trailer caught my door and bent it.

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Q. In 1961 there was a Teamster organizing drive, is that right? A. Right.

Q. Did you participate in that drive? A. Yes, sir.

Q. When did you first become active? A. In 1961.

Q. When did you first hear about it? A. In the summer or spring, I don't remember the date.

Q. What action did you take as far as the Teamsters organizing drive? A. I went down to the Teamsters Hall and got some slips.

Q. When you say slips, are these Teamster cards? A. Yes, sir.

Q. And what did you do with these cards? A. Carried them around and got them signed and then gave them to Dick Piland, and I presume he gave them to the National Labor Relations Board.

Q. About how many people did you talk to concerning the Teamsters? A. I would say 175. Every line driver that runs out of Dallas.

Q. You spoke to every line driver? A. Everyone that I knew.

Trial Examiner: How many signatures did you get?

The Witness: I would say 75.

Q. (By Mr. Avedon) After you started working for the Teamsters did you have a conversation with Dale Scruggs about the Teamsters? A. Right. Along about April, 1961, I don't know the date.

Q. Tell me what happened. A. I made a trip to Amarillo and while I was up there the dock foreman—well, I won't tell the name because I feel that he would get fired—

Mr. Mathews: I'm going to move that that be stricken.

Trial Examiner: It will be stricken.

Q. (By Mr. Avedon) Just tell us what you said to Mr. Scruggs. A. I heard in Amarillo that I was going to be fired, so when I got back to Dallas I called him.

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Q. You called him? A. I talked to him a few minutes and I said, "I better come down to see you."

And I went down to his office and I said, "Mr. Scruggs, is it true you're going to fire everyone that messes with the Teamsters?"

And he said that he didn't know anything about it. So then I tell him that I have belonged to the Teamsters in the past and worked on jobs where there were Teamsters, and he told me that that was none of his business

And I told him, "If you don't want me around here, you tell me because I got another job and I'll quit and leave right now."

And he said as far as he was concerned I was making them a good hand.

Q. You were making him a good hand? A. Right.

Trial Examiner: This conversion was in April 1961?

The Witness: Right.

Trial Examiner: But the union organizing drive was in November, the latter part of 1961?

The Witness: Well, the first one. Now, we signed slips twice.

Trial Examiner: This was some other time that the union was organizing, is that it?

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The Witness: We signed slips twice, and then we signed slips later on. The election between Hester and Craig slowed it up. It was 300 slips signed and then he run for president and they quit that—trying to get him to be president, so he lost the election.

Trial Examiner: Well, Mr. Witness, this election, then, was held on November 30, 1961, and the organizing drive which took place just before that was not the first organizing drive?

The Witness: No, sir.

Trial Examiner: So this conversation was with Mr. Scruggs in April of '61, referred to previous to the organizing drive with the Teamsters?

The Witness: That is right.

Trial Examiner: Now, you were telling about getting a number of cards signed, I think you said 75, and having approached 175, is that right?

The Witness: Well, I would say that many.

Trial Examiner: Was that previous to your conversation with Mr. Scruggs which was in April 1961, or was that in connection with the latest drive of the Teamsters and the election in November and December 1961?

The Witness: In other words, I signed up the first time, then we quit and commenced to work on this other one. Then after he lost this election we went right back to signing them up again.

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Trial Examiner: So the 75 you say you got signed up, that was the total number?

The Witness: In both.

Trial Examiner: In both drives?

The Witness: Right. In other words, I had the slips in my possession at all times.

Trial Examiner: And this conversation with Mr. Scruggs, about people active for the Teamsters being fired, as you said?

The Witness: Uh-huh.

Trial Examiner: Or as you said you feared?

The Witness: That is what I was told.

Trial Examiner: That was sometime before the election in 1961?

The Witness: Right, I would say.

Trial Examiner: Then you got busy again?

The Witness: That is right.

Trial Examiner: All right. Go ahead.

Q. (By Mr. Avedon) Now, in July of 1961, was there an election within the Union of Transportation Employees?

A. Right.

Q. And I think you said Hester ran. Who did he run against? A. Mr. Craig.

Q. Did the Teamsters support one of the candidates? A. Yes, sir.

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Q. Who did they support?

Mr. Mathews: I'd like to object to this unless materiality can be established.

Mr. Avedon: I just have certain documents which I know you will introduce if I don't.

Mr. Mathews: Well, I'll withdraw the objection.

Trial Examiner: I would like to know the materiality of it or the connection which you expect to make, not necessarily on the record, but if my mind can be clarified so I can determine it to my own satisfaction, either in the presence or outside the presence.

Off the record.

(Discussion off the record.)

Trial Examiner: On the record.

Q. (By Mr. Avedon) I think you established who you supported? A. In what race?

Q. In the UTE race for president. A. Right, Hester.

Q. And who won? A. Craig.

Q. What happened to Hester? A. He worked thirteen days or fourteen, I'm not sure, and he got fired.

Q. Who did he work for? A. Red Ball Motor Freight.

Q. What was the reason, if you know?

Mr. Mathews: I'm going to object unless this man has got personal knowledge.

Trial Examiner: I don't see how he can.

The Witness: Well, I know he told me.

Trial Examiner: Objection sustained.

Q. (By Mr. Avedon) After the election were you called into Mr. Barr's office, after this UTE election were you called into Mr. Barr's office?

Trial Examiner: And what date would this be?

The Witness: It seems to me like it was July the 5th. It was about three or four days after the election.

Q. (By Mr. Avedon) Of the UTE election? A. I think that is when the election was, in July, I don't have all that wrote down.

Q. Prior to that Mr. Barr called you in? A. Right.

Q. What was Mr. Barr's job? A. Safety director.

Mr. Mathews: So we can keep the record straight, I'll stipulate with you, Counsel, that it was on the 18th of July and not the 5th, 1961.

Trial Examiner: Would you accept that date?

Mr. Avedon: Yes, sir.

Q. (By Mr. Avedon) What was said by Mr. Barr? A.

When he called me in?

Q. Right. A. He said he had charts—

Q. Is that a tachograph chart? A. Right, where I had

been running up to 56 miles an hour and wanted to know my excuse for it. I told him I was just letting it roll up and down the hills, and he said he was going to ask me to sign a thing there that I wouldn't do it any more or I would be terminated.

Then he got the log and he also said, "I'm going to ask you to sign one—" As well as I recall he said that I had made several mistakes on my log and he was going to ask me to sign a statement also for the ICC that I would not make another one.

I believe that is the way it ran. That same big word was in there that I would be fired.

Q. The word, is that dismissal? Is that what you mean?

A. Yes, sir, that's it.

Q. Mr. Cathey, I show you—have you ever seen that?

A. Right.

Q. And was this the letter? Did you sign that letter? A. Right.

Q. That is your signature on it? A. Right.

Q. Were you shown the charts at the time? A. No, sir, I

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didn't look at them. We were talking about charts and he said, "I have a chart on you up to 56 miles an hour," and asked me my excuse for it.

And I said I didn't know I had been driving 56 miles an hour. I may have been driving 50, but I didn't know I was driving 56.

Q. Did he show you the chart? A. And he said—how would I know whose chart it was? I did not look at the chart. He did offer to show me the chart. He said, "I have a chart here if you want to look at it."

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Q. (By Mr. Avedon) Now, will you tell us how many

charts were shown to you, or when Mr. Barr was talking, tell us what he said about charts? A. He said, "I have a chart on you where you have driven up to 56 miles an hour. What's your excuse for that?"

Q. What did you say to that? A. I said, "I don't have any excuse, I didn't know I had been driving 56 miles an hour."

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Q. (By Mr. Avedon) Mr. Cathey, I show you what has been marked as GC-30. Have you ever seen that document? A. Yes, sir.

Q. Where did you see it? A. In Mr. Barr's office.

Q. Is this the letter that Mr. Barr gave you making reference to ICC violations? A. I signed this one and then later signed that one.

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Q. (By Mr. Avedon) Had you ever received any warning, any written warnings before these two warnings of July 19, 1961? A. You mean from Red Ball?

Q. From Red Ball. A. One.

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Q. I see. What is the speed limit in the State of Texas as far as trucks? A. Forty-five miles an hour.

Trial Examiner: That's on the highway, I take it?

The Witness: Right. In the city whatever it might be posted.

Q. (By Mr. Avedon) Did you ever attend any company safety meetings? A. Yes, sir.

Q. When were these meetings held? A. Along about the time the Teamsters were trying to get in.

Q. The election was held December 30, 1961? A. Two months prior to that would be during the month of September and October.

Q. Who would speak at these meetings? A. Mr. Barr spoke, Mr. Henry English spoke a little at one meeting that I attended.

Q. I'm talking only of the meetings that you attended. A. Mr.—I don't know his name, he was at one meeting.

Q. Was it— A. Ernie Fisk, he also spoke.

Q. Was the subject of driving speed on the highway discussed at this meeting? A. Yes, sir, usually about when the meeting was started. Mr. Barr for about four or five minutes would talk about speeding.

Q. What did Mr. Barr say about what the speed was to be on the highway? A. Well, we were at a meeting and one of the men got up and said, "Some of us are driving 50 and 55 miles an hour and I don't want to lose my job; just what is the speed that we can drive, can we drive up to 50 miles an hour?"

Q. A driver asked this? A. Mr. Barr.

Q. Mr. Barr? A. Mr. Barr said, "Yes, we will not say anything to you, the company will not say anything to you

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up to 50 miles an hour, but if you get a ticket you will have to pay it. We will not pay tickets."

Q. Did anyone else say something—anything about speed? Any other official say something about speed? A. No, sir.

Q. After this July, when you got these warning notices, I think you told us after the Hester Craig election, you said the Teamsters started organizing again? A. Right.

Q. Did you take any part in organizing again? A. Right.

Q. Did you take any part in organizing at that time? A. The same part I did before.

Q. What did you do? A. Carrying those slips around and getting them signed and turning them in to Dick Piland.

Q. I don't want to know what Mr. Piland did with them. I don't mean to cut you off.

On the day of the election, which we have established

was November 30, 1961, did you make a run to Amarillo?
A. Right.

Q. Did you speak to anyone about the election? A. The dock foreman.

Trial Examiner: Was this the 30th or the 1st?

The Witness: Well, they had two meetings and an election.

Q. (By Mr. Avedon) That was on the night of the first day or the second day? A. I believe it was the second day.

Q. That would be December 1st? A. Right.

Q. And what did you say and what did he say? A. When I got to Amarillo I walked in and I said, "I see you all are not holding an election."

And he said, "That's right. How's it coming down there?"

And I said, "Who do you call we?"

He said, "Who do you vote for?"

Q. Now, who is Craig? A. That's a UTE man.

Mr. Schoolfield: What election are we talking about?

Trial Examiner: When did Craig come into the Labor Board election?

Q. (By Mr. Avedon) Would you explain that? A. When I got to Amarillo, the dock foreman, he said—in other words, he was there, looking through some bills, and I said, "I see you all are not holding an election down here."

He said, "No. How's it coming in Dallas?"

Trial Examiner: That's referring to the Labor Board election between the Teamsters and nonunion?

The Witness: There were three things they were going to vote for, and he said, "Who do you call we?"

And I said, "I sure didn't vote for Craig."

Trial Examiner: Craig was the president of the UTE?

The Witness: And then he said, "Well, you'll be sorry,

these boys up here would sure like to get out of that Teamsters Union," and I said, "That's not what they tell me."

Q. (By Mr. Avedon) Do you know an Ed Walton? A. Yes, sir.

Q. What was his job prior to 1961? A. Before he was a line driver same as I was, drove on the road.

Q. After January did his job change? A. Yes, sir.

Q. What did he become? A. Dispatcher.

Q. Did you talk to Walton about the election or the Teamsters after he became a dispatcher? A. Well, he kidded me about Teamsters losing.

Q. What did he say to you? A. Well, he said, "I see you boys didn't get very far."

Q. What are the duties of a dispatcher? A. Well, he tells you where to go and what to do, and as far as I'm concerned he's the foreman. Mr. Scruggs told me that I would have to do what the dispatcher said.

Mr. Avedon: Can we get an agreement on how this is furnished to the drivers? Will you agree these transport safety reports are submitted by the transport safety patrol

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and submitted to Red Ball and in turn Red Ball submits one copy to the drivers?

Mr. Mathews: Yes, sir.

Mr. Avedon: We can stipulate that?

Mr. Mathews: That is correct, and from time to time there are notations on them.

Mr. Avedon: And these are made by officers?

Mr. Mathews: I don't know, Red Ball Motor Freight, Inc., pays for them.

Mr. Avedon: And Red Ball gets a copy and the driver is sent a copy?

Mr. Mathews: No, sir. Red Ball is furnished the copies and Red Ball in turn furnishes the copy to the driver. Transport Safety Patrol does not.

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Q. Were you ever told by the company about checking wheels and tires? A. I wasn't told by the company, there was a bulletin put on the bulletin board about it.

Q. Will you tell me what was on the bulletin board? A. Well, it went on to tell about some old man, I can't think of his name, setting a trailer afire down in Houston by running the tires flat, and it said something about stopping every 50 or 60 miles and checking your tires.

Q. Is that all that was said? A. That is all.

Q. When a driver makes a tire check what does he do? A. If he doesn't have a hammer or piece of iron, he kicks them with his foot.

Q. What would that do? A. It would show that the tire had air in it.

Q. Directing your attention to the first part of April 1962, did you make a run from Dallas to El Dorado, Arkansas?

A. By the way of Shreveport.

Q. By way of Shreveport. What was the date of that run, do you know? A. Around the first part of April.

Q. Around the first part of April? A. Wait a minute, when did I get fired—I forgot the date on it.

Trial Examiner: We were going to ask you.

The Witness: I don't know.

Q. (By Mr. Avedon) Do you know about when? A. I think it was either May, or April the 5th.

Q. You got fired April 5th, according to the records I have.

Trial Examiner: Will that be stipulated to?

Mr. Mathews: We will stipulate with you he was terminated April 5, 1962.

Q. (By Mr. Avedon) How many days before this did you make this run? A. Well, I don't know.

Mr. Mathews: We will stipulate with you that the run was made on April 1st, 1962.

Q. (By Mr. Avedon) When you started out from Dallas, where was your first stop, where was your destination?
A. El Dorado.

Q. Where was your first place to stop? A. You drop trailers in Shreveport.

Q. Now, did you make any check of your equipment when you left down there from Dallas? A. Yes, sir.

Q. What did you check? A. Everything, lights, tires, wheels, fire extinguisher.

Q. Did you make your run to Shreveport?

Trial Examiner: How far away is Shreveport?

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The Witness: One nineteen, twenty-two.

Q. (By Mr. Avedon) What did you do in Shreveport? A. I dropped that trailer and picked up another one.

Q. Did you change tractors? A. No, sir.

Q. Did you make any check in Shreveport? A. Yes, sir.

Q. What did you do? A. Same thing.

Q. Did you leave Shreveport? A. Yes, sir.

Q. What time was this? A. After dark.

Q. While you were driving after leaving Shreveport, something unusual happened? A. Yes, two wheels run off and I got it straight and it rolled off—one of those wheels rolled off and it kind of wiggled down through the road and I steered it off to the side, plumb off of the pavement.

Q. Two wheels came off? A. Right.

Q. Where did they come off? A. Off what?

Q. Two right wheels of the tractor? A. Right.

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Q. Are those the driver wheels? A. Yes.

Q. I gather you were able to bring the vehicle to a stop?
A. Right.

Q. What happened to these two wheels after they left your vehicle? A. One of them rolled by the car and rolled down and stopped.

Q. What happened to the other? A. There was a car parked, a boy and a woman had had a flat and when you have a flat you open your turtle, they were up front jacking it up and this other wheel ran square into this turtle hole.

Q. In other words, one of the wheels that run off hit the car?

Trial Examiner: Hit the parked car in the rear?

The Witness: Right.

Trial Examiner: And the people were up front?

The Witness: Right.

Q. (By Mr. Avedon) Were any of the people hurt? A. No.

Q. None of the people were hurt? A. No, sir.

Q. Was damage done to the car? A. Yes, sir.

Q. About how much? A. Three fifty.

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Q. Three hundred and fifty dollars? A. Right.

Q. Was any damage done to the truck? A. Nothing other than having to buy new lugs and putting them back on.

Q. How far were you from Shreveport when this accident occurred? A. I would say 68 to 70 miles.

Q. Where was this? A. Junction City.

Q. What state? A. Arkansas.

Q. How far is it from Shreveport to El Dorado? A. Eighty-nine miles.

Q. How far is it from Junction City to El Dorado? A. Fifteen miles, I would say.

Q. Sixteen? A. Fifteen.

Q. How far were you from Shreveport when this accident occurred? A. I just said from 68 to 70 miles. I didn't check it.

Q. Now, after you pulled your vehicle off the road, stopped your vehicle, did you get out and check it? A. Yes, sir.

Q. Did you look and see where the wheels had been? A.

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Yes, sir.

Trial Examiner: You noticed that two wheels were missing?

The Witness: Yes, sir.

Q. (By Mr. Avedon) What happened? A. What had happened?

Q. What had happened, what caused the wheels to come off? A. Those studs broke off.

Q. There were studs from where to where? A. They come out of the hub.

Q. They came out of the what, the brake drum? A. Right.

Q. And they go into where? A. Well, you have a hub and you have a stud sticking out just like on your car. Then you put a wheel on, then you put a nut on. This nut you put on behind this wheel has threads inside and outside, and when you get that nut tight you put another wheel on and another nut, so therefore this little stud here supports both wheels.

Q. And this connects the wheel to the brake drum? A. Yes, sir.

Q. How many studs are there? A. Ten.

Q. What happened, did they shear off? A. Right.

Q. All ten of them? A. Right. They were broke off at

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that time when I stopped and looked at them.

Q. Can you tell from the outside by looking where the wheels are on the brake drums, can you see the—are the studs open to view? A. No, sir.

Q. What is covering them? A. Two wheels and two lugs.

Q. In other words, how could you tell if the studs were shearing off? A. You're asking my opinion?

Q. Right. A. I would say you'd have to jack it up to get where you can see it.

Q. You would have to take the wheels off and then you could check the studs? A. Right.

Trial Examiner: You didn't do that at Shreveport?

The Witness: No, sir, I didn't jack it up and take the wheels off.

Q. (By Mr. Avedon) Did you ever jack up equipment? A. Never in my lifetime.

Q. Would a tire check disclose that these studs were shearing off? A. No, sir.

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Q. Why not? A. Well, when you kick a tire you just kick it to see if there's air in it.

Q. You don't take the tires off, do you? A. No, sir.

Q. You know of any other driver that ever did? A. No, sir.

Q. Were the police called after this accident? A. Yes, sir.

Q. What happened then? Did they take you somewhere? A. El Dorado.

Q. What happened after you got to El Dorado? A. You mean the first time?

Q. The first time. A. The first time, me and the man that owned the car went to El Dorado. In other words, the man that owned the car, he was in a car by himself behind his boy and wife.

Q. He was in another car? A. They were ahead of him and this wheel had run into their car.

Q. Was a report made by the Arkansas State Police about this accident? A. Yes, sir, they wrote it down.

Q. And did they give you a traffic ticket? A. No, sir.

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Q. Did they give you a citation? A. No, sir.

Q. Did they give you anything showing violation on your part? A. No, sir.

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Q. (By Mr. Avedon) Did you eventually get your truck back into El Dorado? A. Yes, sir.

Q. How did you do that? A. The man in Shreveport, the shop foreman in Shreveport who works for Red Ball, brought me another tractor.

Q. He brought you another tractor? A. Right.

Q. Then you took the truck into El Dorado? A. Right.

Q. Did you speak to the Shreveport shop foreman about the accident? A. You mean the one that came out and brought me the tractor?

Q. What did he say to you and what did you say to him?

Trial Examiner: What is his name?

The Witness: I don't know his name.

Mr. Avedon: All right.

Q. (By Mr. Avedon) How do you know he was the shop foreman? A. I went down there and he was there, and I called the shop foreman, his name is Sandy, I guess that is a nickname, I don't know.

Q. You knew him as Sandy? A. He didn't come himself, he sent another man out with a tractor, because I know him

when I see him.

Q. Sandy was the shop foreman? A. He didn't come himself personally, he sent someone.

Q. Did you talk to Sandy about the accident? A. Told him what happened.

Q. You brought the tractor into El Dorado, is that right? A. Yes, sir, that is right. Not the one that the wheels ran off of.

Q. The trailer? A. Right.

Q. When you got to El Dorado did you talk to any company official? A. Right, terminal manager.

Q. When was this? A. I talked to him the night it happened.

Q. What did you say to him, what did he say to you? A. I told him that two wheels ran off the truck and hit a parked car. And he told me to come on into El Dorado and fill out a report on it in the morning. In the meantime,

call the state police, and they came out there in their car, two of them, and checked it over.

Q. They made a report of an investigation? A. Right.

Q. Did you have another conversation with the terminal manager? A. The next morning.

Q. What did you say to him, what did he say to you? A. I went in and he said, "Where is the car now?"

Trial Examiner: The car? Is this the passenger car?

The Witness: The one that was hit. He and I got in his pickup and talked to the people about having it fixed, and they estimated that \$350 would fix it. Then, in turn, he called the Transport Insurance man down there and he wrote all that down.

Q. (By Mr. Avedon) Did you say anything to the terminal manager about whether you would continue working for the company? A. I told him, "I want you to call Dallas," and he wanted to know why, and I said I wanted to know now whether or not I've got to go home on the bus. I mean I was going to get fired. I figured they would fire me right there, and he said, "No, they ain't," and I said, "Yes, they are."

Q. Did you say to him why they were going to fire you? A. That is right.

Q. What did you tell him? A. Because I had carried slips around and they knew I was a Teamster.

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Q. (By Mr. Avedon) Did Mr. Nethercutt say anything to you about what Mr. Barr had said? A. After he hung the phone up. He said, "Go on and go to bed. Mr. Barr told me he would call back later and tell me what to do with you."

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Q. (By Mr. Avedon) After that conversation with Mr. Nethercutt, did you have any other conversation with Mr. Nethercutt after this, what you told us, after you recounted what Mr. Barr said? A. No, sir.

Q. Where did you go next? A. Houston.

Q. When was that? A. Monday night.

Q. Monday night? You took a run with a trailer and everything? Was that a regular run? A. Yes, sir. It wasn't a regular run, I was an extra man anyway. I guess they had an extra run to Houston.

Q. But it was a regular company run? A. Right.

Q. When you got into Houston, did anything happen? A. You mean that morning?

Q. That morning. Did any company official speak to you? A. No, sir.

Q. Did you have any conversation with the Houston dispatcher? A. That night.

Trial Examiner: Now, what's the date we're talking about?

Q. (By Mr. Avedon) Could you give us a date? A. I would say Tuesday, about 9:00 o'clock.

Trial Examiner: That would be Tuesday, April 3rd?

The Witness: Yes, sir.

Q. (By Mr. Avedon) And that is at 9:00 a.m. or p.m.? A. That's p.m.

Q. Where did this conversation occur? A. I was sitting in the TV room and he called me outside.

Q. Who is "he"? A. Tommy Heathey.

Q. What did Mr. Heathey say to you and what did you say to him? A. He called me out and he said, "Mr. Barr said to tell you that if you did not come to Dallas to call him when you get to where you are going." And at that time he didn't know where he was going to send me.

Q. That is what Mr. Heathey told you? A. Right.

Q. And this is what he said Barr told him? A. Right.

Q. And did you have any other conversation with Mr. Heathey? A. No.

Q. Were you dispatched to Houston? A. To Dallas.

Q. You were given a run to Dallas? A. That is right.

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Q. When were you given this run? A. I would say about midnight he said that if I didn't come to Dallas to call him, that if I did come to Dallas to wait until he got down that morning to see him. Mr. Heathey told me that.

Q. Mr. Heathey told you that that is what Barr told him?

A. That is right. If I did come to Dallas to wait and see him.

Q. Who do you mean by "him"? A. Mr. Heathey. He told me that if I went to Dallas to wait until Mr. Barr came down to go home.

Q. You were given a regular run, that is, with a tractor? A. Same thing.

Q. And you made the run to Dallas? A. That is right.

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Q. Did you see Mr. Barr the next morning? A. Thursday morning around 8:00 o'clock.

Q. Where was that? A. In the main office in Dallas.

Q. And would you tell us what was said? Was anybody else in the office? A. No, sir.

Q. Tell us what was said. A. I went in and he said, "What happened to you the other day?" I said, "Two wheels ran off," and he said, "What happened?"

I said, "Well, the lugs broke off and they run off." Then he brought out a bulletin. I don't know the number of it, and he said, "Didn't you read this bulletin?"

And I said, "Yes, sir." He said, "That bulletin said check wheels and lugs every 75 miles."

And I said, "It doesn't mention lugs." It did have tires on it.

Q. This bulletin didn't have lugs on it? No., sir.

Q. He brought out a bulletin? A. He opened his desk and

got the bulletin and read it himself.

Q. And did he say that it just mentioned tires? A. Yes, sir.

Q. Then what did he say? A. Then he asked me how long I had driven without checking my rig.

Trial Examiner: Checking what?

The Witness: My rig. I told him I hadn't checked it since I left Shreveport.

Q. (By Mr. Avedon) Was anything said about resignation? A. About that time he said, "Well, I'm going to have to ask you to resign."

And I said, "No, sir, I won't."

Q. Did he give you any reason? A. Because I couldn't take orders, I didn't stop and check my rig.

Q. Was anything else said? A. And he said, "I'm going to ask you to resign," and I said, "No, sir, I'm not."

And he said, "You know you got to go to work somewhere." And I said, "I don't know how it would help me."

And he said, "Well, if they call down here I'll tell them that you quit." And I said, "No, sir, you tell them that you fired me because that is what you will do when I leave here,

because it don't make sense to quit a job making eight or nine hundred dollars a month and look for another job."

And he said, "You're not giving me no alternative. How do you want your check?"

I said, "That's up to you, if you hand it to me, I'll take it." And I said, "Do I have the right to call my union representative?"

And he said, "Yes, but it won't do any good." And he

went on in to get my check, I presume. I went over in the line dispatch office and got the telephone and called J. C. House.

Q. Who is he? A. He's the UTE representative. And I told him what had happened and he said, "I'll be down in a few minutes."

So then about that time Mr. Barr came by the door there and he said, "Come on over," and I walked back to the main office, and when he got to the main office he gave me my check. Both checks, one of them said final and one was a paycheck, and then I went on outside and got in my car, waiting on House, I guess, and about that time he came up, and I said, "Well, boy, they fired me."

I just showed him these checks—

Q. Who are you talking to now? A. J. C. House. So I handed him the checks and he said, "Let's go in and see what we can do about it."

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Q. Where did you go? A. In Mr. Barr's office. J. C. said that he wished that he would reconsider a little or something, and he said, "Well, he's done admitted it," and I said, "Wait, I ain't admitted anything."

Then I proceeded to tell the story about me going from Houston after the wheels run off and I left El Dorado going to Houston, I told that story over again in front of J. C. House, and they talked for a few minutes, and directly I said to Mr. Barr, "If I was such a bad risk why did you let me drive to Dallas, why didn't you call the police and have me took off that thing down at Corsicana?"

And he said, "Well, I was just going to wait until you got to Dallas." And I said, "In other words, you knew you were going to fire me when you talked to those people?"

And he said, "Yes." And I said, "In other words, if I hadn't got around to Dallas I might have got another day or two's work?"

And he said, "That is right. If they had sent you some-

where else, in other words, I was going to fire you when you got into Dallas whether it was Thursday morning or Wednesday morning."

Q. Did Mr. Barr say the reason you were being fired? A. I couldn't take orders. I remember him saying that.

Q. Did he say anything else? Did he give the reason you

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were being fired? A. Not that I remember.

Q. Not that you remember. Was the matter of this tire check bulletin discussed? A. Yes, it was discussed between he and I.

Q. What was said? A. He said, "Did you read bulletin so and so?"

Q. Was this in Mr. House's presence? A. Well, I don't recall, I know it was in he and I's presence and Mr. House, there wasn't too much said. Mr. Barr said, "This case is closed as far as I'm concerned."

And Mr. House went out and I went out right behind him.

Q. Was anything said about another chance? A. Well, J. C. mentioned that.

Q. What did he say? A. Well, he said he wished that he would reconsider.

Q. To whom? A. Mr. Barr, and as well as I remember—I know, because, well, I believe J. C. did ask him if he would reconsider. He believed it would be better for him to consider hiring me back after I had been there that long and knew as much about the company's regulations as I did, than going out to hire a new man to take my place, that that would cost a lot of money to break him in. And Mr. Barr told him that he couldn't do it.

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Q. Did Mr. Barr say what instructions you hadn't complied with? A. I hadn't stopped and checked my tires.

Trial Examiner: Hadn't what?

The Witness: Hadn't stopped and checked my rig every 75 miles.

Q. (By Mr. Avedon) Do you know any other instances where wheels have come off tractors? A. I know a driver told me his did.

Q. A driver told you? A. Right.

Q. Do you know the name of this driver? A. Yes, sir, but I couldn't call his name.

Q. What is his name? A. Billy Rushing.

Q. Mr. House left you in the office and you left right behind him? A. Right, right behind him.

Q. After this time of your discharge did you have any conversations with Mr. Dale Scruggs? A. Yes, sir.

Q. When was that? A. About a week. See, I came down that same day and signed up on unemployment and they wanted to know where I had been working, and they said, "Why aren't you working?" They wrote all that down,

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they signed me up, and he said—

Trial Examiner: Who is "he"?

The Witness: The Social Security man.

Q. (By Mr. Avedon) I asked you if you had a conversation with Mr. Dale Scruggs. A. Yes.

Q. When did you? A. Well, about two weeks after that I went over to the Coca-Cola Company and filled out an application and told him that I had been working for Red Ball, the man over at Coca-Cola, or Mr. Kraft was his last name, and he wanted to know why I got fired and I told him.

Q. Did you talk to Mr. Scruggs? A. Then I called Mr. Scruggs and asked him if he would give me a recommendation and he said, "I sure will," and I told him then that "I'm trying to go to work for Coca-Cola, and if you will give me a recommendation they will hire me," and he said he would.

Q. He would? A. Yes, sir.

Q. Were you hired by Coca-Cola? A. No, sir.

Q. Have you ever been recalled to work? A. No, sir.

Q. Have you ever worked for Red Ball since your discharge? A. No, sir.

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Q. Has any official with Red Ball ever complimented you on your work? A. I've had Dale Scruggs tell me I was doing all right.

Q. On several occasions? A. Yes, sir.

Q. What would he say? A. Oh, I'd just ask him if I was doing all right and he'd say, "Yes." I never had any trouble with him all the time I was there.

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Cross Examination

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Q. (By Mr. Mathews) Mr. Cathey, do you recall you attended a safety meeting in the Dallas general office on May 1, 1961? A. Well, no, sir, not the date. I remember attending several meetings. I'd say eight or nine, altogether.

Q. Well, do you remember attending one in May 1961? A. No, sir I don't remember the date. I remember attending meetings.

Q. Mr. Cathey, I'm going to hand you an instrument which purports to hold your signature. A. Every meeting I signed something.

Q. Well, I will ask you if that is your signature on that piece of paper? A. It is.

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Q. And you signed that, did you? A. I sure did.

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Q. (By Mr. Mathews) Do you recall having attended an-

other safety meeting on July 18, 1961, in Dallas, Texas?

A. As I said before, I don't remember the dates, but every meeting I went to I signed a deal just like that, a piece of paper. I can look and tell you.

Q. Well, I'm going to show you the one dated July 18, 1961, and ask you if that is your signature. A. I will say that is my signature. I don't know.

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A. In other words, how it is fastened on?

Q. Yes, sir. Now, just take the dual tire and wheel. A. Let's start with the hub. It has a little stud sticking out.

Q. There's ten of them? A. That's right, they're a round circle.

Q. And by studs you mean a bolt? A. That is right, with threads on it.

Q. And no nut? A. No nut.

Q. Just the male part? A. There's a hub here and ten studs sticking out with threads on them.

Q. Right. A. Then you put one wheel on.

Q. And by putting the wheel on you match up ten holes in the wheel with the studs, correct? A. Then you put ten studs behind the wheel and you tighten them.

Q. With what? A. An eye wrench.

Q. Do you put a bolt on it? A. Put a tap on. This tap has threads in it and same, also on the outside. They do it with an eye wrench.

Q. Now, you've got the first wheel on. A. That is right.

Then you put another wheel on and that nut furnishes the thread for the second wheel.

Q. And then you put anything on top of that? A. Other than the lug, no, sir.

Q. And you've got ten lug bolts out there in plain view, on the outside? A. That is right.

Q. And you can see those, can't you? A. That is right.

Trial Examiner; When you say nuts, do you also refer to them as lugs? These nuts and lugs, they are the same thing? You spoke of lugs and you spoke of nuts.

The Witness: I just call them all nuts because a lug, I don't know actually what that means, because I haven't looked it up.

Q. (By Mr. Mathews) Well, you are speaking of the mechanical device which screws on? A. That is right.

Q. And you can see those with the eye, can't you? A. That is right.

Q. You wouldn't have to kick, shake or hit, or otherwise, to see if one of these was loose or not, you— A. Well, if one was loose you might have to feel of it.

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Q. As a general rule couldn't you tell if these nuts were loose enough for that wheel to work on those lug bolts? A. By looking at them?

Q. Yes. A. That is right.

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Redirect Examination

Q. (By Mr. Avedon) Mr. Cathey, I just want to go through this with you. On this tractor, how many sets of axles were there? A. There was the steering front axle—

Q. That's your front axle, it has two wheels, then what's the next axle you have? A. We always call it a drag axle.

Q. And how many wheels on it? A. One on each side.

Q. Is power transmitted through that axle? A. By a belt.

Q. And right behind that you have another axle? A. Right.

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Q. And this has how many wheels on each side? A. Two on each side.

Q. And these two wheels on this third axle were the ones that come off, is that right? A. Right.

Q. On this third axle you have a drum, or you call it a hub, is that from the axle where you put your tires on? What would connect the tires to the frame of the tractor? A. A spring.

Q. A spring? A. That is right. The axle is under there and then the spring is connected to the axle.

Q. What connects the axle to the wheels, is that this drum or what you call a hub? A. That is a hub.

Q. The hub, I take it, is where you have studs, is that right? A. Right.

Q. And how many of them are there? A. Ten.

Q. Ten studs. How long are these studs? A. I'd say that long.

Trial Examiner: He's indicating an inch and a half.

Q. (By Mr. Avedon) An inch and a half? These studs come out and then a wheel fits on there, is that right? A.

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Right.

Q. Then what would you put on next? A. Nuts.

Q. Nuts. How long are these nuts? A. I'd say they're that long.

Q. That would be about three inches? A. Three inches, two and a half.

Q. And these nuts fit on the studs, is that right? A. Right.

Q. And that anchors the first wheel to the hub, is that right? A. That is right.

Q. Is there a thread on these nuts? A. On the outside and inside.

Q. There is one thread on the side that would fit on the studs? A. On the inside.

Q. On the inside. And then there is a thread on the outside? A. That is right.

Q. After you put these nuts on, what would go on next? A. Another wheel.

Q. Another wheel? And then after that what would go on? A. Ten more nuts.

Q. Ten more nuts, which would anchor the second wheel to the first wheel and then you were on to the hub, is that

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this hub? A. Right.

Q. What would happen if the outer nuts fell off or came off? A. The outside wheel would come off.

Q. Would the inside wheel come off? A. No, sir.

Q. Why? A. The inside lugs are separate. They would hold it on.

Q. And in the case of your accident, what broke? A. Those studs that come from the hub that were supporting the whole thing.

Q. I see. Are both wheels between anyone looking at correct? A. Right.

Q. Is this hub visible to the eye when the wheels are on? A. No, sir.

Q. It's not? A. Well, change that, you might see a portion of the hub, but you couldn't see those studs.

Q. Because these studs are fitting in between these other wheels? A. You couldn't see within two inches of them.

Q. But you couldn't see the whole hub or the ten studs? A. No, sir.

Mr. Avedon: This is a rough drawing. I'd like to mark

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this, please.

Mr. Mathews: Who drew it?

Mr. Richards: An expert in the theory of tires and wheels.

Q. (By Mr. Avedon) Would that be an approximation of what would be involved? A. Right.

Mr. Avedon: Now, I'd like to label this. I've labeled A, that would be the hub.

The Witness: Right.

Q. (By Mr. Avedon) And B would be? A. The studs.

Q. The inner studs. C would be what? A. The inside wheel.

Q. D would be what? A. The inside lugs.

Q. D would be joined to what? A. The studs.

Q. Which is marked as B, is that right? A. Right.

Q. And E is? A. The outside wheel.

Q. And F would be the outside nuts? A. And there are ten of them.

Q. And they would go on D, is that right? A. Right.

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Q. And this would be where you joined your two wheels to your hub? A. Right.

Q. Now, what came apart? A. No, the studs are labeled B.

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Further Redirect Examination

Q. (By Mr. Avedon) These outside lugs, did anyone ever say anything to you after the accident that they were loose? A. No.

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HENRY J. LEWIS

was called as a witness by and on behalf of the General Counsel and, having been first duly sworn, was examined and testified as follows:

Direct Examination

Q. (By Mr. Avedon) Would you state your name and address, please. A. Henry J. Lewis, Route 1, Keithville, Louisiana.

Q. When did you start working at Red Ball? A. January 1957.

Q. And where did you start? A. On the dock.

Q. Where is that? A. Dallas.

Q. Who hired you? A. Frank Oxford.

Q. And what was your job? A. Working on the dock and yard work.

Q. What was Frank Oxford's job at the time? A. Terminal manager.

Trial Examiner: You started when?

The Witness: January 1957.

Q. (By Mr. Avedon) Were you ever transferred from Dallas? A. Transferred in '59 to Shreveport.

Q. In '59? A. '59, to Shreveport.

Q. And what job did you have in Shreveport? A. Line driver, over-the-road.

Q. What is the difference between the line driver and a pickup driver?

Trial Examiner: We have that in there.

Q. (By Mr. Avedon) Now, did you ever take any active part on behalf of the Teamsters Union? A. I did.

Q. When was that? A. It started the last part of 1960 and went on through 1961.

Q. And before the election—you know the election was in November 30, 1961? A. Yes.

Q. What activity did you take on behalf of the Teamsters? A. Well, I got a few little petitions signed for an election for the Labor Board.

Q. Is that cards? A. Yes, cards.

Q. Did you talk to anybody? A. I talked to every driver I seen, a hundred line drivers, more or less.

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Q. (By Mr. Avedon) March 1961, did an incident occur in Greenville, Texas? A. Yes, I dropped a trailer down at Greenville.

Q. What happened? A. The dollies buried up and we had to have a man come out and jack it up for \$14 to cover the

expenses.

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Trial Examiner: May it be stated at this time the respondent's reason for this employee's discharge?

Mr. Mathews: This information was heretofore turned over to the Labor Board, Mr. Examiner. This man was placed on one year's probation, effective May 1, 1961. At the time he was terminated he was on this year's probation. The specific event that led to his discharge was that on January 11, 1962, Henry J. Lewis failed to pick up a trailer-load of freight in Paris, Texas, and signed a statement to the effect that he did not because of his own negligence.

Then on March 12, 1962, presented a pay claim to the company for him to be paid for this claimed work and the company terminated him.

Q. (By Mr. Avedon) Were you given a warning at this time?

Mr. Mathews: Which time are you talking about?

Q. (By Mr. Avedon) Eight March or April in connection with this incident of 1961, with respect to the Greenville incident. A. I was called in and talked to.

Q. By whom? A. Dale Scruggs.

Q. What did he say? A. He told me that they provided blocks on the Greenville yard to drop those trailers on and that I should have dropped it on them and I didn't. But there weren't any blocks on the yard.

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Q. (By Mr. Avedon) After that March 1961 incident I take it you were called in by Mr. Scruggs? A. Yes.

Q. Was it after the first? A. Yes, it was after the first. He told me that if the trailer had sit there it would have

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buried up. I dropped it one night and they got under it the next morning and he said the trailer would have buried up.

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The Witness: It sat there all night and Dale Scruggs called me in the next morning and said that it would have buried up, the dollies would have buried up. It sat there all night and didn't bury up.

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Trial Examiner: I think the record should show the substance of our off-the-record understanding that when he speaks of getting under the trailer, he means that when a trailer is dropped and left that there are dollies, or dolly wheels which the trailer or tractors carry which are lowered under the trailer and they support the trailer in the absence of the tractor, but that the trailer should be left on more or less firm ground so that these dolly wheels will not go in soft ground and they require some effort to raise.

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Q. (By Mr. Avedon) In Greenville are there certain places where trailers are to be parked? A. No, there's no certain marked place.

Q. I mean, is there a concrete apron? A. No, gravel.

Q. Where did you drop these trailers? A. I dropped one on the lower side of the dock.

Q. Just on the gravel, is that right? A. Right.

Q. Now, in the fall of 1961 the Teamsters continued their organizing campaign, didn't they? A. Yes, sir.

Q. Were you active? A. Yes, sir.

Q. What did you do? A. Well, the same thing, talked to drivers, tried to get them to sign up.

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Q. (By Mr. Avedon) did you act as a Teamsters observer? A. No, I didn't.

Q. Did you have a conversation with Mr. Lane about an observer? A. I did.

Q. When was that? A. It was on the morning of the elec-

tion, about 4:30.

Q. Where was this? A. It was at the terminal.

Q. What was Mr. Lane's job at the time? A. He was terminal agent.

Q. What did Mr. Lane say to you, what did you say to him? A. I told him I wasn't going to be an observer because Acey Fox had backed out of being an observer.

Trial Examiner: You told who?

The Witness: Ted Lane, the agent.

Q. (By Mr. Avedon) You told Ted Lane what? A. That I wouldn't observe, but Foots Johnson advised me that it would be best if I didn't observe.

Q. Who is Foots Johnson? A. He's the secretary-treasurer.

Trial Examiner: How did this conversation come about?

The Witness: I went up on the dock and talked to Lane.

Trial Examiner: This is before the election started?

The Witness: It was going on at that time.

Trial Examiner: I mean, how did you happen to say that?

The Witness: I just walked in his office and told him that I wouldn't be an observer.

Trial Examiner: Well, an election was going on, he knew that you were not an observer?

The Witness: Yes, sir.

Q. (By Mr. Avedon) Was this conversation before or

after the election started? A. I believe the election started at 8:00—before the election started.

Q. You said something about a letter, what did you say?

A. Ted Lane sent me a letter relieving me of duties so that I could be an observer.

Q. For the Teamsters? A. Yes, sir.

Q. The receipt of this letter, was the receipt of this letter from Lane so that you could be the Teamsters' observer?

A. I got it about 2:00 a.m., and the election started at 5:00 a.m.

Q. And then you had this conversation with Mr. Lane?

A. Yes.

Q. In which you told him you were not going to be an observer? A. I told him that I had signed one of those things. I told him—and he said, "Well, you might as well go ahead and observe."

Q. That was what Mr. Lane said to you? A. I turned and walked off the dock.

Q. But you didn't act as the observer?

Trial Examiner: Well, what about this letter from Mr. Lane? There was a letter from Mr. Lane to you?

The Witness: Yes, sir.

Trial Examiner: Authorizing you to take time off to

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observe?

The Witness: Yes, sir.

Q. (By Mr. Avedon) Do you have that letter? A. No, I don't.

You don't know where it is? A. No, sir.

Q. Did you make a search for that letter? A. It's in Shreveport, I didn't bring it.

Q. Would you be able to get that letter to us? A. Yes, sir.

Trial Examiner: It might, if that fact is true, that he was authorized at one time to take time off to be an observer, possibly can be stipulated to.

Mr. Mathews: I will so stipulate, Mr. Lane, terminal agent in Shreveport, gave him the letter and I assume that Mr. Lewis wanted to come in and tell him that morning he wasn't going to observe.

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Q. Why didn't you observe? A. Foots Johnson told me it would be better that I didn't.

Mr. Mathews: Mr. Fox is still with us.

Q. (By Mr. Avedon) In January 1962 what was your job?

A. Line driver, over-the-road.

Q. Out of where? A. Shreveport.

Q. And who tells the drivers what runs to make? A. The dispatcher, dock foreman, agent.

Q. Can a driver just make his own run without being told by the dispatcher where to go? A. No.

Q. Who tells the drivers where to make pickups or deliveries? A. On his book, trip tickets.

Q. Who instructs the drivers what trailers to pick up or drop? A. Dock foreman, dispatcher, or whoever is in

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charge.

Q. Are drivers authorized to pick up a trailer without instructions? A. No.

Q. Where there's to be a pickup or a drop of the trailer, how would the driver be advised? A. It would be—it's supposed to be marked on his book, the place where he's supposed to pick it up, the number of the trailer.

Trial Examiner: It is possible you might be called if you're out on the road somewhere and told to pick up something?

The Witness: Not likely, I never was called.

Q. (By Mr. Avedon) Do you have any radio equipment in your trailer? A. No.

Trial Examiner: Well, I was thinking of a phone.

The Witness: No, because, see, the city pickups have radios in their trucks.

Trial Examiner: City pickup drivers are in contact while they're over at this place, but that is not the case in over-the-road drivers?

The Witness: No.

Q. (By Mr. Avedon) Are drivers on their own without instructions from the dispatcher or a dock foreman authorized to drop one trailer and pick up another one? A. No.

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Q. Who tells drivers what freight should be picked up?

A. The man in charge on the dock.

Q. On the dock? A. Or dispatcher.

Q. Or dispatcher. Are drivers authorized to pick up freight without being so instructed? A. He's authorized, I think, if the freight is sitting on the dock, not on the trailers.

Q. But going the way he's going if it's sitting on the dock, then he's authorized to pick it up, but not on a trailer? A. Yes, sir.

Q. In January 1962 did you make a run from Shreveport to Paris to Sherman, Texas? A. I did.

Q. Who dispatched you? A. I believe it was Baker.

Q. Where, in Shreveport?

Trial Examiner: What was the name?

The Witness: Baker.

Q. (By Mr. Avedon) What were you hauling and where were you going? A. General freight. Going to Paris and Bonham.

Q. When you left Shreveport, had you been given any instructions about pickups in Paris? A. No.

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Q. Had you been told about a trailer in Paris? A. No.

Q. Did you make your regular run to Paris? A. I did.

Q. When you arrived in Paris, what did you see and what

did you do? A. When I arrived in Paris I unloaded some freight that was going to Paris off my trailer.

Q. Do you have, did you have some freight still left on your regular truck? A. About 10,000 pounds.

Q. What did you see? A. I unloaded what Paris freight I had that was going to Paris and I seen bills up there on a trailer, I believe the trailer number was 419.

Q. Is this another trailer? A. Yes, this is another trailer.

Q. Where was this trailer? A. It was backed up to the dock and it had school supplies going to Sherman, and the guy in charge of the dock was named Roy. I don't know his last name.

Q. Was anybody else there? A. No.

Q. Did you have a conversation with Roy? A. I did.

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Q. What did Roy say to you and what did you say to him? A. I asked Roy if I was going to pick that up and he said that they had another driver to pick that up. He said that they had another line driver to go, dispatched up there.

I said, "If you'll tell me to, I'll pick that up."

He said, "I'm not going to tell you to."

Q. Why did you say this? A. I had room for it.

Q. Why did you ask him to tell you this? A. Well, because you're not authorized to do that, pick up other freight like that. If they had another man coming through there to pick that up, what would he pick up? He couldn't have found his trailer.

Q. Roy said he wouldn't tell you to transfer it? A. He did.

Q. Did you transfer it? A. No.

Q. What did you do then? A. I went to Sherman.

Q. Which trailer did you haul to Sherman? A. The one that I brought from Shreveport.

Q. When you got to Sherman did you talk to anybody there? A. I talked to the agent.

Q. Do you know the agent's name? A. Jimmie Alred.

Q. What did you say to the agent and what did the agent say to you? A. He asked me if I had brought his school supplies.

Q. Tell us what you told Alred. A. I told him that I told Roy that if he would tell me to I would have picked them up and brought them up there, and so he went in there and called Dallas and I went and ate breakfast and when I come back he told me that Dale Scruggs had told him to tell me to either go back to Paris and pick that load up and bring it to Sherman without pay or catch the bus and go home.

I went back to Paris, picked up the load and received no pay on it.

Q. How far is it, what's the round trip between Paris and Sherman? A. Approximately 124 miles.

Q. And you were not paid for it? A. I was not paid for it.

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Q. (By Mr. Avedon) Now, after you returned with this load from Paris to Sherman, for which you weren't paid, did you have a conversation about that with anybody from the company? A. George Simmons, me and him was talking about it.

Q. Did you have a conversation with Lane? A. I did, after I got back to Shreveport.

Q. Tell us when that was. A. It was about the 15th of January.

Q. 1962? A. Yes.

Q. What did Mr. Lane say to you, what did you say to Mr. Lane? A. He called me in and said that it was careless of me, I didn't use judgment on the deal, he said that although it was as much the man's fault in Paris—

Trial Examiner: What was the man's fault that he referred to?

The Witness: The man in charge of the dock.

Q. (By Mr. Avedon) This is Roy you are talking about?

A. And he said, "I'm going to ask you to sign this, but I want to tell you that you don't have to sign this, but if you don't sign this, this is it." And I signed it.

Q. Do you have the original?

Mr. Mathews: The one dated January 15th.

Mr. Avedon: I'd like to mark this for identification, this GC-41, and it is an interview memo with Mr. Lewis, dated January 15, 1962.

Mr. Mathews: No objection.

Trial Examiner: It will be received.

(The document above referred to was marked General Counsel's Exhibit 41 for identification and was received in evidence.)

Q. (By Mr. Avedon) This is the memo you are telling us about, is that correct? A. That is right.

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Q. And you signed that, did you? A. I signed it.

Mr. Mathews: We stipulate that the original shows Mr. Lewis' signature.

Q. (By Mr. Avedon) Why did you sign the memo? A. Well, if I hadn't signed it he would have fired me.

Q. Have you attended any company safety meetings? A. I've attended three at the most.

Q. At these meetings was the subject of speed discussed? A. It was.

Q. Who said what? When and what was said?

Trial Examiner: Well, does speed have anything to do with his discharge?

Mr. Avedon: Not of this individual, but we have a man in Houston and another man who was discharged for speeding.

The Witness: I heard Dale Scruggs talk.

Mr. Mathews: Could we have the date, time these meetings took place, please?

The Witness: I don't know.

Q. (By Mr. Avedon) What year? A. '61.

Q. What did Mr. Scruggs say?

Mr. Mathews: No month?

Q. (By Mr. Avedon) Do you know the month? A. No.

Q. Where were the meetings? A. General offices, in Dallas.

Q. Tell us what Mr. Scruggs said. A. He said, "Lately we have been light on you boys as far as your speeding. We don't want you to drive over 50 miles an hour but we won't say anything up to 50 miles an hour. If you get any tickets you'll pay for them, the company will not."

Q. Now, while the driver is driving, how is his pay computed? A. By the mile.

Q. Are drivers paid anything when they drop or pick up a trailer? A. If it's not on Red Ball property they get one hour's pay.

Q. When they do what? A. When they drop a trailer or pick up a trailer.

Q. In either case, they get an hour's pay, if it's off Red Ball property? A. Right.

Q. And when they pick up a trailer some place else they get an hour's pay? A. That is right.

Q. How about when their trailer is being loaded or unloaded? A. Yes, if they help.

Q. Is that what is known as tonnage? A. Yes, tonnage.

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Q. (By Mr. Avedon) Did you ever, prior to March 1962, make any pickups at the Ludlow plant in Homer, Louisiana? A. I did.

Q. About how many times did you make this pickup or delivery? A. I would say two times or more.

Q. Generally what would you pick up? A. Rolls of paper.

Q. When you say paper, rolls, would they be big or small? A. Big ones and little ones.

Q. Was this generally a light load or partial load or what? A. Generally a light load.

Q. On these other occasions prior to March of '61, had you ever put in for tonnage? A. I did.

Q. Had you helped load or unload on those occasions? A. I did.

Q. Had you received the tonnage in your paycheck? A.

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I did.

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Q. At Homer, Louisiana, where did you go? A. I went to Ludlow Paper in Homer, Louisiana.

Q. And you picked up certain freight there? A. I did.

Q. And in connection with that did you make a claim for reimbursement or compensation for the pounds of freight that you picked up? A. I did.

Q. And what was that amount? A. Twenty-six thousand five hundred and four pounds, signed by Mr. Prince, dock foreman in Shreveport.

Q. Now, Mr. Prince is the—I'm sorry. A. A dock foreman in Shreveport.

Q. Were you paid for that, for the tonnage for that claim? A. I was.

Q. On GC 45, dated 4-26-60? A. I went to Homer, Louisiana.

Q. What did you pick up there? A. Picked up a load of paper.

Q. What kind of paper? A. A roll of paper.

Q. From where? A. Ludlow Paper.

Q. What was the weight on that? A. Forty-two thousand five hundred and sixty pounds.

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Q. Did you receive a compensation? A. I did. Initialed by Red Baker, dock foreman and dispatcher in Shreveport.

Q. Now, on these two occasions did you perform any work in connection with the unloading of this paper? A. I assisted.

Q. What did you do? A. Helped roll them in.

Q. Into where? A. In the trailer.

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Q. (By Mr. Avedon) Now, I think you said yesterday that you had made a number of other runs to this Ludlow Paper Plant? A. I did.

Q. Were these runs made after the April of '60, that I have entered into these trip reports? A. Some after and some before.

Q. On the trips made after April of '60, did you assist in loading or unloading of the trailer? A. I did.

Q. What type of claim for compensation did you put in?

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A. I put in two and a quarter cents per hundred.

Q. And you received those claims? A. I did.

Q. May I ask you this. When you put in a claim did you mark it a certain way? How would you put the weight on the driver's log? A. Well, it all depended, sometimes the driver and sometimes the man that dispatched them.

Q. Would put the weight on and then what would happen next? A. It would be signed.

Q. By who? A. By the man that dispatched him.

Q. And he would approve that as a correct weight, is that right? A. Yes.

Q. Make that on these driver's trip reports? A. Now,

sometimes he would go ahead and sign that tonnage before it was ever loaded because he didn't know how much it was when he dispatched me he would also sign the tonnage before it was loaded. In other words, in advance he would approve the tonnage in advance and then when I got down there and got my bill on my freight, I would add the tonnage.

Q. But before you actually went there, say, you'd tell him that you were going to help load or unload? A. I didn't tell him.

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Q. He just knew? A. He just signed it.

Q. All right. A. Because I wouldn't know until I got there what it was going to be.

Q. Now, on all of these trips, prior to the trip in March of '62, when you put in a claim for tonnage, did you receive it? A. I did.

Q. Now, directing your attention to March, 1962, did you have a pick up at this Ludlow Plant in Homer, Louisiana? A. Yes, sir.

Q. What was the date? A. It was the 11th, it was on a Sunday, the 11th, I believe.

Q. Of March? A. Yes.

Q. Did you make a pick up or delivery? A. Pick up.

Q. Where did you—what terminal did you leave from? A. Shreveport.

Q. Who dispatched you, do you know? A. I believe it was Prince.

Q. And Prince is who? A. Dock foreman.

Q. And what did Prince tell you? A. He had me dis-

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patched and signed out when I got to Shreveport. When I got to the terminal he called me over the phone and told me to go to Strickland and pick up a trailer. Go to Ludlow in Homer, pick up a load, and pick up my regular run for them in Shreveport.

Q. Did you go to the Ludlow Plant? A. I did.

Q. What did you pick up there? A. Picked up rolls of paper.

Q. Do you know how many rolls of paper? A. I believe it was about thirty.

Q. Big rolls? A. Yes, sir, it was.

Q. Did you help, did you help load? A. We rolled approximately fifteen rolls on the trailer.

Q. When you say we, who do you mean? A. I mean it was me and two more guys working down there. These other two guys are employed by Ludlow.

Q. Yes. A. We rolled them on and then we rolled them off and he took the lift and set them up in the trailer.

Trial Examiner: Who was "he"?

Q. (By Mr. Avedon) Who's "he"? A. The lift operator. I don't know his name.

Q. And what did he do? A. We rolled them off. Then he

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took the lift and set them up in the trailer.

Q. What work did you perform at the time? A. I helped roll them on and off.

Q. Did you eventually get them loaded? A. I did.

Q. Did you put in a claim for tonnage on this trip? A. Yes, I did.

Q. When did you put the claim in? A. I turned my trip tickets in the next day.

Q. After leaving Homer, where did you go with the trailer? A. I went on to Shreveport, dropped it on Strickland's lot.

Q. And then what did you do? A. I went to the Red Ball terminal, picked up the trailer going to Sherman and went to Sherman.

Q. You made a regular run to Sherman? A. Regular run to Sherman.

Q. When you got back to the terminal did you talk to any-

body about your claim for tonnage? A. It was about two or three days, maybe longer, that I got this trip ticket back.

Q. Now, I mean when you put in, either the day or the day after, did you talk to anybody about the claim for tonnage? A. Well, I didn't necessarily talk to anybody.

Q. Did you bring it to anybody for approval? A. Yes,

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Prince approved it.

Q. What was his job? A. He was a dock foreman and acted as dispatcher.

Q. I show you what has been marked as G. C. Exhibit No. 47, which is a driver's daily log dated 3-11-62, have you ever seen that?

(The document above-referred to was marked General Counsel's Exhibit 47 for identification.)

A. Yes, sir. I have.

Q. Have you ever seen that before? A. I have.

Q. What is that? A. That is a daily log and trip ticket.

Q. And this is for the trip we are talking about? A. Yes, sir, it is.

Q. Does this also show the regular run to Sherman? A. It does.

Q. Does this, I notice that down on the bottom, or mid-way, it shows tonnage. A. This trip.

Q. This trip? A. Sixty-two thousand and sixty pounds over all.

Q. Who put in that figure, did you put it in? A. I did.

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Q. (By Mr. Avedon) After this drop at Homer, did you ever hear about your claim for tonnage after that? A. I did.

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Q. Who inquired about it? A. Dale Scruggs.

Q. And in what fashion was this? A. He sent my trip ticket and log back with a letter asking me did I help load the trailer, that it had come to him that I didn't and he wasn't intending to pay it and wanted to know if I helped load.

Q. What did you do? A. I wrote him a letter back.

Mr. Schoolfield: I'd like to object to this unless the letter is introduced.

Q. (By Mr. Avedon) Do you have the letter? A. I sent the letter back.

Mr. Schoolfield: You don't have the letter in your possession?

The Witness: No.

Trial Examiner: Maybe we can get the letter.

Mr. Mathews: We don't have the letter.

Q. (By Mr. Avedon) Now, you said you received the letter from Dale Scruggs? A. I did.

Q. Tell us what that letter said. A. Well, he asked me did I help load the freight.

Q. Yes. A. And asked me all about it and I wrote him a letter back that I did help load the freight. I took the letter

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in to Prince, the dock foreman, in Shreveport and he read it and said, "I'll write him a letter and sign it. I dispatched you on that run, you're entitled to the tonnage."

Q. That is what he said to you? A. He did.

Q. Did Prince write the letter? A. Yes, he did.

Q. Did you see Prince write the letter? A. I did.

Q. Do you know what was in the letter that Prince wrote?

Trial Examiner: We have that letter?

Mr. Avedon: You don't have the letter that Prince wrote?

Mr. Mathews: First time I've heard of it.

Q. (By Mr. Avedon) Will you tell us what that letter that Prince wrote to Mr. Scruggs said? A. He explained that he dispatched me on the run and I went to Homer, picked up the paper, and he explained that he had signed the ton-

nage for me to collect on the loading of the paper and signed his name.

Q. And Prince wrote the man that he dispatched you on the original date? A. Yes.

Q. Were you given a copy of this letter by Prince? A. No. What he did was wrote it on the bottom of the letter that

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Dale Scruggs sent me.

Q. Oh, I see, and he didn't write a separate letter? A. No.

Q. He wrote it on the bottom of the letter that Scruggs sent you? A. Right.

Q. Then what happened to that letter? A. It was sent by mail.

Q. Who dispatched it? A. I put it in the envelope and addressed it to B. D. Scruggs, General Office, Dallas, Texas. Mr. Whittle, nightwatchman, put it in the mail.

Q. Did you see him put it in the mail? A. I did.

Q. That is the United States mail? Is this Company or U. S. Mail? A. It's Company mail.

Q. In other words, the Company has an inter-office mail, does it? A. Yes, sir, it does.

Q. And this letter was put through their facilities? A. Yes, sir.

Q. Were you paid for tonnage on this trip? A. No.

Q. That you made to Homer? A. No.

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Q. Were you paid for waiting time on this trip to Homer? A. No.

Q. You received no pay? A. I received no pay.

Q. For the time you were in Homer, Louisiana? A. I received mileage pay, but no tonnage or waiting pay.

Q. How long were you in Homer? A. Two and a half hours.

Q. Two and a half hours? Did you do anything further

about this claim for tonnage on this Homer trip? A. The evening of the 27th of March, I believe, Calloway, the dispatcher in Shreveport, called me by phone and told me "they want to see you in Dallas."

Trial Examiner: Who?

The Witness: Said, they want to see you in Dallas.

Q. (By Mr. Avedon) Did he say any individual? A. No.

Q. All right. A. I asked him what for and he said he didn't know. I asked him how I was going to Dallas and he said he didn't care how I got there.

Q. At the time what city were you in? A. Shreveport.

Q. Did you go to Dallas? A. I did. That night.

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Q. How did you get there? A. In my car.

Q. Were you paid for that trip to Dallas? A. According to my figures I was not.

Q. When you got to Dallas did you speak to anyone? A. When I first got to Dallas I called J. C. House, U.T.E. Union representative.

Q. Did you go to the Red Ball office? A. The morning of the 28th.

Q. Who did you go with, if anybody? A. I went by myself.

Q. Did you see any Company officials there? A. I seen Dale Scruggs.

Q. Where was this meeting? A. When I went in the office he told me to have a seat, that J. C. House had just called, that he would be down there in a little while. J. C. got there, he went into the office.

Q. What was said at this conversation? A. He told me the reason that he had called me was on account of this trip ticket claim on tonnage which I didn't handle. I told him that I did help handle the tonnage. He said that he had proof that I didn't from the Ludlow Paper Company. He didn't read the letter, I hadn't seen the letter and he told me that this was something that he wouldn't overlook.

He said, "You've got your Union Counsel here", and he went on to say that he wouldn't overlook this and that he figured that I was dishonest with the Company and wouldn't overlook it. J. C. House said, "What do you intend to do about it"? He said, "I intend to fire him."

Q. Was anything about a resignation said? A. He said, "I'm going to give you a change to resign", and I said, "No."

Q. Did Mr. Scruggs say what you should have charged instead of tonnage? A. He said I should have charged by the hour.

Q. In other words, that is waiting time? Was there a difference between what you would have gotten had you charged waiting time and what you claimed for tonnage? A. I hadn't figured. I figured a couple of dollars.

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The Witness: That is breakdown, not unloading or loading.

Mr. Avedon: I think the contract will have to speak for itself?

Q. (By Mr. Avedon) At tonnage costs what would you have received? A. Two and a quarter cents per hundred pounds.

Q. For how many pounds? A. Thirty-nine thousand three hundred and sixty-four pounds.

Q. Did you receive either tonnage or waiting time for this trip? A. When I received my check, according to my figures, I didn't.

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Q. (By Mr. Richards) Mr. Lewis, I think yesterday you had testified about an interview session sometime in May

of 1961, with Mr. Scruggs and Mr. Barr. A. Yes, I did.

Q. Is that correct? A. Yes, it is.

Q. How did this interview come to take place? A. Well, I dropped a trailer down at Greenville and the trailer didn't sink in the ground, it didn't break through, but they called me in and said the agent had called them.

Q. Who? Who called you in? A. Dale Scruggs called me in and at that time he introduced me to John Barr.

Q. Were you working out of Dallas then or Shreveport? A. I was working out of Dallas at the time, on the board.

Q. I see. If you will, relate to us as best you recall the conversation that took place on this occasion. A. They told me about the trailer and said that they got a tractor under it before it buried up the next morning. It had sat there all night and they said they had got a tractor under it the next

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morning and then didn't talk about the trailer anymore. Dale Scruggs had said that he had seen me with a group of men talking and that I had told several men that they had run arounds coming and that I had no right to tell the men that and that one incident happened in Houston. He said that I told a man that he had a run around coming.

Trial Examiner: What do you mean by a run around?

The Witness: I mean that they run another man out ahead of him and they should have run him out.

Q. (By Mr. Richards) This is with respect to line drivers, is that right? A. On an extra board, first in and first out. And he said he had seen me with groups of men around the Dallas docks talking to them and causing trouble between the men and he didn't want that to happen. He said in this conversation that we were having in here if it leaves this office we will call you in and discharge you from the Company and John Barr said, "And if it does leave this office, we'll know that it was you who talked. We're going to put you on a year's probation and you'll be sent a copy

of it." And I received the copy and then I shook hands with both of them and walked out.

Q. If you know, was this at a time when there was any Teamster organizing activity going on? A. Yes, sir, it was.

Q. Were you engaging in any Teamster organizing activities at the time? A. Yes.

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Q. What was the nature of the Teamster activity, what were you doing? A. Well, I was talking to the men trying to talk them into the notion of signing Teamster cards to hold an election with the Labor Board.

Q. I take it from your testimony there was no mention of the Teamsters in this conversation that you described? A. No, sir.

Trial Examiner: What was the date of this conversation?

Mr. Richards: May of 1961.

Mr. Mathews: May 2nd, to be exact.

Q. (By Mr. Richards) If you know Mr. Lewis, was there any damage done to the trailer about which the Company supposedly called you in? A. No, sir. There was no damage.

Q. Were you told this by Dale Scruggs? A. By Dale Scruggs.

Q. During this conversation? A. Yes, sir.

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Cross Examination

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Q. (By Mr. Mathews) Now, Mr. Lewis, do you recall an incident whereby you had the dollies on a semi-trailer break

through the crust on the lot at Greenville, Texas, on or about December 3rd, 1960? A. I did.

Q. That did involve a trailer which you dropped there in Greenville? A. That is right.

Q. Do you recall another incident which happened at Greenville, Texas, on or about— A. Wait a minute, on that first one, I paid for having that picked up.

Q. Well, I didn't ask you that. I asked you if you recalled it? A. Yes, I do recall it.

Q. Do you recall another incident where you dropped another trailer on April 26th, 1961? A. I do.

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Q. Do you recall another incident where you dropped a trailer and the dollies went through the asphalt at Tyler, Texas, on December 9th, 1960? A. I do not.

Q. Are you testifying that you did not drop the trailer and the dollies went into the asphalt? A. I'm saying I dropped a trailer but it didn't bury up.

Q. Now answer my question, are you testifying that you did not drop a trailer at Tyler that went through the asphalt? A. I'm testifying that I did not.

Trial Examiner: Well, did you drop a trailer?

The Witness: Yes, sir, but I dropped it on the concrete and it didn't bury up.

Q. (By Mr. Mathews) Do you know whether or not the Company had to hire a wrecker service to pick that trailer up? A. No, sir, I don't.

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Q. (By Mr. Mathews) Well, do you recall an incident where you—that happened to you in connection with your line driving activities at Clarksville, Texas, on February 6th, 1961? A. I remember.

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Q. What happened at Clarksville on that date? A. It was raining, slicky, and the way they have got of backing into

the terminal, I slipped in the ditch and had to be pulled out.

Q. Do you recall having been called into the office on the 11th day of February, 1962, and had a talk with Mr. Scruggs regarding these incidents? A. I do.

Q. Did he call you into the office on or about that date and discuss these matters with you? A. I don't remember the date. I remember he did discuss them with me.

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Q. Who is the person whose initial is B. H. at Shreveport? A. Bill Hogan.

Q. Who's Bill Hogan? A. He's a line driver.

Q. Did he ever place an initial on your combination driver's log and trip ticket, dated March 11th, 1962, which is in evidence in this case as G. C. Exhibit 47? A. He did.

Q. At whose request? A. Mine.

Q. And at that time that driver's log and trip ticket was sent into the Dallas office it didn't bear anybody else's initial except that of Billy Hogan, did it? A. That is right, until it was sent back.

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Q. All right. A. When it was sent back Prince initialed it.

Q. Then when it was returned to you with Scruggs' letter is it your testimony that that was when he initialed over B.H.? A. He initialed over to the side over there.

Q. Well, I'll hand you the original and tell me if you don't see B. H. right under it, isn't it? A. Off to the side of it and Prince out to the end.

Q. Now, I want to know this, Mr. Lewis, why did you ask another line driver to initial this tonnage on this trip ticket when you knew from instructions that it was supposed to be the dock foreman or terminal manager? A. I didn't know from instructions.

Q. You mean you didn't know from instructions? A. I've

got trip tickets where line drivers have initialed my tonnage and I've got paid for it.

Q. All right, now, answer my question. Is it your testimony that you had never been instructed that these trip tickets were not to be initialed by other than dock foremen and terminal managers? A. I was never instructed until I got called in on that.

Q. That is the first instructions you ever received on it? A. Yes.

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Q. At what time on March 11th, 1962, did Mr. Hogan initial that driver's log and trip ticket? A. At what time?

Q. Yes, sir. A. Oh, I'd say 8:30 or 9:00 o'clock.

Q. Morning or night? A. Night.

Q. And what time were you out there? A. Where?

Q. Look at your driver's log and tell me what time you were out there to pick up your paper. A. I got there at 3:45, p.m.

Q. And you were there how many hours? A. Two and a half.

Q. What time did you arrive back at the Shreveport terminal? A. 8:15 p.m.

Q. 8:15 p.m.? A. Right.

Q. Was Mr. Prince there at the time? A. He was not.

Q. Was the assistant terminal manager there at that time? A. He was not.

Q. What is his name? A. J. Calloway, I think. I don't

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know what his title is.

Q. Do you know? A. No, I don't know.

Q. Was the terminal manager there? A. No,

Q. Was there any dock foremen there? A. No.

Q. That is your testimony, that at 8:30 at the Shreveport terminal on March 11th, between the hours of 8:15 and 8:30

there was no supervisory personnel there? A. No one but a nightwatchman.

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Direct Examination

Mr. Avedon: State your name and address for the Reporter.

The Witness: William Clem, 305 East Cason, Irving, Texas.

Q. (By Mr. Avedon) When did you start working for Red Ball? A. May 8th.

Q. What year? A. '61.

Q. And who hired you? A. Harold Odum.

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Q. Did you become active in the Teamsters organizing campaign at Red Ball? A. Yes, sir.

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Q. When did you start? A. I think it was November 16th.

Q. Is that when you became active? A. Yes, sir.

Trial Examiner: Of '61?

The Witness: Yes, sir.

Q. (By Mr. Avedon) What did you do as far as the Teamsters were concerned? A. Well, I talked about what they could do, I already had a card and signed up the men.

Q. Did you act as an observer? A. Yes, sir.

Q. Where? A. Fort Worth, Texas, and Dallas, Texas.

Q. Who were the other observers? A. Joe Shamblin and Gordon Hodgkins.

Trial Examiner: All observers for the Teamsters?

The Witness: Yes, sir.

Q. (By Mr. Avedon) Now, did you check any specific group as to eligibility at this election? A. Just the names that were on the shop list.

Q. The names that were on the shop list? A. Yes, sir.

Q. Now, before this election did you attend a pre-election conference? A. Yes, sir.

Q. Where was that held? A. At the Labor Board.

Q. At the Labor Board Office? A. Yes, sir.

Q. Was Mr. Ernie Fisk there? A. Yes, sir.

Q. Did you have a conversation with Mr. Fisk at the time? A. Yes, sir.

Q. Will you tell us what happened there? A. Well, after checking over the names of the list—

Q. What list? A. The list that Mr. Ernie Fisk turned over to me.

Q. He produced a list? A. Yes.

Q. What happened? A. He said that well, "That is the list", and so I checked it over and there were two names left off the list and he asked me how did I know and I told him that I had looked in the rack out there at the shop.

Q. What rack are you talking about? A. The time card rack.

Q. What did he say to that? A. He said that it wasn't

none of my business looking at them time card racks.

Q. Yes. A. And I told him that it was there for anybody to see because they were out there and anybody could look at them as they walked by.

Q. Uh-huh. A. He said, "Well, those two men are not on the payroll. We have the men that are on the payroll on that list." Then they checked and he said he was going to make a call to Dallas which he did and later on Mr. Schoolfield came back with the two names and they were added to the list.

Mr. Mathews: Well, Mr. Examiner, what relevance has this got to do with this proceeding?

Trial Examiner: I don't know, the fact that he was an observer was relevant.

Mr. Avedon: I wanted to show that he had a fight with Mr. Fisk.

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In what way was your work different from December 1st than it was before?

The Witness: Well, they cut the overtime for one thing.

Trial Examiner: You mean they cut it out on December 2nd?

The Witness: Yes, sir, they told me so.

Q. (By Mr. Avedon) Who told you so? A. Harold Odum.

Q. How about special runs? A. Well, Eddie told me there wouldn't be anymore of that for me.

Q. Had you been getting road calls before the election?
A. Yes, sir.

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Q. (By Mr. Avedon) Now, the last day of the election was December 1st. Did you go to work on December 2nd?
A. Yes.

Q. Do you know what day that was? A. That was Saturday.

Q. Did you see Eddie Olswaski on Saturday? A. Yes, sir.

Q. Where? A. I went into the coffee room, got me a cup of coffee and some of the other men, approximately seven more men, were sitting in there at the time that I walked in and they told me—

Mr. Mathews: I'm going to object to anything that they told him, as hearsay.

Trial Examiner: Sustain.

Q. (By Mr. Avedon) What did Mr. Olswaski say? A. Mr. Olswaski told me, he said, "There's that no-good so-and-so Teamster" and Eddie goes out and hangs a Teamster button on my time card. Then he comes back into the coffee room and he tells me that that damn bunch of

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Teamsters ought to be whipped or shot and whipped with a chain. They're telling a man how to run his company, and so he started and commenced to cussing me and I didn't pay no attention to him. He said, "Clem, I'm talking to you."

Q. That is what Olswaski said? A. He said, "Clem, I was talking to you." He said, "This is just the way I feel about it", and he said, "I'm pretty sure the Company feels the same way."

Trial Examiner: Was that said in the hearing of these other men?

The Witness: These seven men that were in there.

Trial Examiner: How near were they to you when Mr. Olswaski said that?

The Witness: Just like we're sitting right here (witness indicates).

Trial Examiner: Three or four feet apart?

The Witness: Yes, sir.

Q. (By Mr. Avedon) Did you say anything to Mr. Olswaski? A. I told him to quit cussing me because it's the Company rules out there not to strike another man. So I went on to work.

Q. Did Olswaski say anything about conversations with other Company officials? A. He said that he had had a conversation with Harold Odum and Ernie Fisk and said as

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of that date they were going to try to get rid of me and he said he had heard that over there at the Labor Board I had

caused a lot of trouble about adding two names to the list and I told him that was all that we did was add two names to the list and he told me that I was a damn liar.

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Q. (By Mr. Avedon) Now, in January of 1961, what, did you have any conversations with Mr. Odum?

Mr. Mathews: You mean January of 1962.

Mr. Avedon: I'm sorry. January of 1962.

The Witness: Yes, January 5th.

Q. (By Mr. Avedon) All right. Would you tell us where this conversation took place? A. It was in Harold Odum's office. He called me in there.

Q. Tell me what Mr. Odum said to you, was anybody else there? A. James Moudy, another employee.

Q. All right. And would you tell us what was said by them there? A. I was called into the office.

Q. Uh-huh. A. And James Moudy had told him that I was still creating trouble out there among the men.

Q. What did Odum say? A. And Odum told me that I had better keep my mouth shut.

Q. What else? Did he say anything else to you? A. Well, he just told me that I had created enough disturbance out there and that James Moudy had said that I was still causing rumors and everything that was having the men messed up.

Q. Did he say rumors about what subject? A. Yes, it was towards the Teamsters.

Trial Examiner: Did Moudy say anything in this office?

The Witness: Moudy was the one that told him about me.

Trial Examiner: Well, did he say anything about you in

the office?

The Witness: Yes, sir.

Trial Examiner: What did he say?

The Witness: Of course I was in the dark as to what Moudy was talking about and Harold had Moudy to repeat what was going on.

Q. (Mr. Avedon) What did he say? A. Well, he just told him that I was the man out there that caused all of the dissention in the trailer shop.

Q. What did Odum say to you after that? A. So he just went ahead and told me that was I satisfied with my job and I told him yes and he said, "Evidently not", because I wouldn't keep my mouth shut.

Q. Did you say anything to that? A. Well, it's supposed to be a man's privilege to say anything he thinks. He said, "That's not true at Red Ball, there's working in good harmony", and I said, "If a man says anything about Red Ball or he starts agitating some of the men then the Company gets on him and they want to fire him."

Q. Was anything else said? Did Odum say anything to you after that? A. He just told me to take that as a warning and I went on back to my work.

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Q. (By Mr. Avedon) You were called into the office?
A. Yes, sir.

Q. Who was in the office? A. James Moudy and Harold Odum.

Q. What was said at that time? A. Well, Harold Odum said I was fired.

Trial Examiner: Well, that wasn't the first thing that was said, was it?

The Witness: Yes, that is the first thing that was said to me.

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A. Well, I asked him what the situation was about and he said I was still causing trouble but they were going to give me another chance.

Q. Did he say what kind of trouble? A. Well, because I wouldn't keep my mouth shut about the Teamsters.

Q. Were you terminated at that time? A. Well, I was and I wasn't.

Q. Well, after that did you work? A. Yes, sir, I went back to work.

Q. And you continued working for a period of time, is that right? A. Yes, sir.

Q. Now, in February of 1962, did you have another conversation with Mr. Odum? A. I think February the 5th.

Q. Where was the conversation? A. In Harold Odum's office.

Q. Who was present? A. Just Harold Odum.

Q. And yourself? A. Yes, sir.

Q. What was said by Mr. Odum and what did you say?
A. Harold Odum told me that he needed a good man in Denver that knew how to work on gasoline and diesel, knew

how to weld aluminum and repair trailers and he said that I fitted the bill.

Q. Did he say anything about the caliber of your work?
A. And he said I was the number one as far as the work was concerned.

Q. Did you say anything to him? A. I told him that how come here three weeks ago, you know, he got on the subject of sending me to Denver.

Trial Examiner: What's this?

The Witness: He got on the subject of sending me to Denver.

Trial Examiner: Well, he didn't mention that three weeks ago?

The Witness: No, he didn't mention it three weeks ago.

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Q. (By Mr. Avedon) Did he say what he was going to pay you? A. And he said he's going to pay me \$3 an hour and he said I could move anywhere in the System as far as maintenance.

Q. What were you receiving at the time? A. I think two eighty-one.

Q. When you said you'd go to Denver did Mr. Odum say anything to that? A. Well, he just looked kind of surprised and he said he would get Mr. W. C. Perry to see about it.

Mr. Mathews: I object to the remark that he looked kind of surprised.

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Q. (By Mr. Avedon) What was your rate of pay after this conversation? Did you have another conversation with Mr. Odum about Denver? Well, I told him after he had told me—

Trial Examiner: Well, you did have another conversation?

The Witness: Yes, sir.

Trial Examiner: Where did it take place?

The Witness: In Harold Odum's office.

Trial Examiner: He called you in?

The Witness: No, sir. I went in and asked him.

Trial Examiner: About what?

The Witness: He had told me about this Mr. Bailey who was supposed to be a Teamster official in Denver.

Q. (By Mr. Avedon) Is this what Mr. Odum told you, that Bailey was a Teamster official? A. Yes, sir.

Q. What did he say about Bailey. A. He said that Bailey, the Teamster official, said it was okay to send anyone he

wanted to up there.

Q. All right. A. So that night I asked Mr. Dick Piland which is a Teamster official here in Dallas, if he knew a Bailey up there in Denver and he said he'd check, and so that same night he checked and the next night I went down and told Harold Odum that the Dallas Teamster official couldn't find out anybody by the name of Bailey, in Denver, with the Teamsters Union there.

Q. What did Mr. Odum say? A. He said, "Well, that the Dallas Teamsters were wrong."

Q. Did you tell Odum about whether you would or would not to go to Denver at this time? A. I told Mr. Harold Odum that I had adopted a child and that my wife had decided that I wasn't going to move to Denver and he told me that we would have to work something else out.

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Q. Directing your attention to the middle of April, 1962, were you called into Mr. Odum's office? A. Yes, me and four or five others.

Q. What did Mr. Odum say? A. He said that he had orders, talked to all of us, he said—

Trial Examiner: Did you find out who all was there?

Q. (By Mr. Avedon) Who was present?

Trial Examiner: These four or five men?

A. Well, I'd rather not call their names.

Trial Examiner: They were in the office, were they not?

The Witness: Yes, sir.

Trial Examiner: Well, if they were in the office they talked to whom?

The Witness: Harold Odum.

Trial Examiner: Well, the Company knows their names because Mr. Odum was talking to them, unless there is some other reason.

Q. (By Mr. Avedon) Do you know the men's names? A. Well, I know some of them, not all of them.

Q. Would you tell us the names you remember being in the office? A. Well, Billy Millican, James Moudy.

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Q. (By Mr. Avedon) Did Mr. Odum say how the men had been selected for layoff? A. By seniority.

Q. Was the subject of bumping discussed with Mr. Odum? A. Nobody said a word about bumping because I was next up. I told Mr. Odum I was going to bump in and he told me I was a damn liar, because I wasn't a member of the U.T.E.

Q. What do you mean by bump in? A. To use my seniority.

Q. He told you what? A. He told me I couldn't because I didn't belong to the U.T.E.

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Mr. Avedon: There is a provision in the contract about seniority.

Mr. Mathews: You want to know whether he had a right to bump and I'll so stipulate.

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Trial Examiner: Was there anything further said after he said that you didn't have the right to bump because you're not a member of the U.T.E.?

The Witness: No, sir.

Trial Examiner: Was anything said afterwards?

The Witness: No, sir.

Q. (By Mr. Avedon) After you were laid off did you ever pass that shop after that? A. Yes, sir.

Q. Did you ever see any employees with less seniority than you working there? A. Yes, sir.

Q. Do you know who they were, can you give some names? A. J. C. McIvers, Harry Evers, and Verb C. Goff.

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CROSS EXAMINATION

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A. Yes, sir.

Mr. Avedon: December 2nd, 1961.

The Witness: Yes, sir.

Q. (By Mr. Schoolfield) It was right after the election?

A. Yes, sir.

Q. What coffee room were you in? A. The lunchroom.

Q. The lunchroom at the shop? A. Yes, sir.

Q. Do you know if there are two other lunchrooms in the terminal? A. Yes, sir.

Q. You say that there were seven other men present? A. Yes, sir.

Q. Who were those men? A. I'm not going to say because those men have got fourteen, fifteen years seniority and if I was to say it before these men here they would go back out there and fire those men because I said that they heard Eddie make that statement.

Q. Then you refuse to answer my question? A. Well, I don't refuse, because I want to, it's to protect those other men that were in that shop. A man with fourteen, fifteen years seniority is hard to lose.

Q. Then you do refuse to answer my question?

Trial Examiner: The witness is reluctant to answer the

question.

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The Witness: There was J. C. McDaniels, Henry Modisette, W. H. Russell, and M. D. Hall.

Trial Examiner: I might say further to assist you, although you've started answering the question if you didn't start to strike your testimony, your entire testimony for that point I would have to grant the motion. That will be harmful to your case. All right, let's proceed.

Any others you can think of?

The Witness: No, there were a couple more there but I don't remember.

Q. (By Mr. Schoolfield) You don't recall their names?

A. There was seven of them in there.

Q. But you don't recall their names? A. Yes, sir.

Q. That was J. C. McDaniels, Henry Modisette, W. H. Russell, and M. D. Hall? A. Yes, sir.

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Q. (By Mr. Schoolfield) Now, did you ever exercise any bumping rights, Mr. Clem? A. After Harold Odum told me

what he did, I didn't.

Q. You contacted the U.T.E. representative? A. No, sir. After Harold Odum, I mean, Carroll Loving gave me a letter of dismissal I didn't fool with the U.T.E.

Q. What letter of dismissal? A. That letter right there, that you have got a copy of in your files.

Q. That is this little piece of paper right here? A. Yes, sir, that's what Carroll Loving gave me to sign.

Q. Did you ask him for it? A. No, sir, I sure didn't.

Q. What kind of conversation did you have with him? A. I didn't have no conversation.

Q. You didn't talk to him at all? A. No, sir, he came out and asked me to sign that and I asked him what it was and

he said that it's a dismissal from the U.T.E. and I signed it right there.

Q. You didn't hesitate to sign it? A. No, sir, for the simple reason that the U.T.E. don't mean nothing to those men out there.

Q. You were glad to get out of it, is that right? A. Yes, sir.

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Q. I don't believe you like the U.T.E., do you Mr. Clem?
A. I joined it.

Q. My question was that you don't like the U.T.E., is that right? A. Yes, I do.

Q. Then you do like the U.T.E.? A. Why certainly.

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Mr. Avedon: State your name and address for the Reporter, please.

The Witness: Joe Shamblin, 5628 Maxwell Street, Dallas 17, Texas.

EXAMINATION

Q. (By Mr. Avedon) When did you start working for Red Ball? A. April 17, 1957, I believe.

Q. What work were you assigned? A. I was assigned to pick up and delivery and dock work in the City of Dallas.

Q. In the City of Dallas? A. Yes, sir.

Trial Examiner: Can it be stated at this time the reason for discharge of this witness:

Mr. Mathews: Well, I don't have the specific sheet in front of me but generally I can state that it was for failure

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of Mr. Shamblin to pick up freight within the City of Dallas.

Q. (By Mr. Avedon) Prior to your working for Red Ball, who did you work for? A. Worked for Red Arrow Freight Line.

Mr. Mathews: For the record I'll give you his personnel file but that personnel file will reflect that he went to work April the 11th, 1957, and not the 17th.

Q. (By Mr. Avedon) Now, while working at Red Arrow did you belong to any Union? A. Yes, sir.

Q. What Union was that? A. Union of Transportation Employees, U.T.E.

Q. Did you have any position with the U.T.E. at the time? A. Yes sir, I served as committeeman.

Q. After starting at Red Ball did you receive any warnings? A. No, sir.

Q. In '57 or '58 did you receive any warnings in connection with your duties of picking up freight? A. The best I recall in 1958, I received some warnings for not checking freight, not bringing in the amount of pieces of freight that I had signed for.

Q. Do you recall how many warnings you were given? A. I believe it was three.

Q. You were discharged at that time? A. No, sir.

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Q. (By Mr. Avedon) Did you ever become an officer of the U.T.E.? A. I believe it was the latter part of 1959, yes, sir, I became an officer of the U.T.E.

Q. What was that? A. I became a Councilman for the city pickup and delivery men.

Q. Did you become a higher officer than that? A. Yes, sir, in 1960.

Q. All right. A. I was appointed by the President of the U.T.E., R. S. Craig, to be Treasurer.

Q. Of the U.T.E.? A. Yes, sir.

Q. Were you ever elected to be an officer in the U.T.E.?

A. Yes, sir.

Q. What were you elected to? A. I was elected to the Treasurer of the U.T.E. in 1961.

Q. As Treasurer did you perform duties? A. No, sir, I did not.

Q. Why not? A. I didn't have any, I was never given any records to perform.

Mr. Schoolfield: I object to this. What's the materiality of this?

Trial Examiner: I don't know. I suppose it's preliminary.

Mr. Schoolfield: Well, we're having a lot of preliminary stuff, Mr. Examiner.

Trial Examiner: Well, if it's not tied up—

Mr. Avedon: I'm going to tie it up. In fact, I'm going to tie it right into the Company.

Mr. Schoolfield: Well, the question he just asked was whether he has any records in the U.T.E.

Q. (By Mr. Avedon) I show you a letter which has been marked for identification as G.C. Exhibit 57, addressed to the Union of Transportation Employees. Have you ever seen that letter before?

Mr. Mathews: What is the date?

Mr. Avedon: There's no date on the letter.

(The document above-referred to was marked General Counsel's Exhibit 57 for identification.)

A. Yes, sir.

Q. (By Mr. Avedon) Do you know when that letter was sent? A. It was sent on October the 8th.

Q. What year? A. 1961.

Q. To whom was this letter sent? A. A copy was mailed to Red Ball Motor Freight Lines.

Q. And the original was sent to who? A. The original was

handed to the President of the U.T.E. by myself on October the 8th.

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A. On the following Tuesday after I mailed the letter, October 8th, the dispatcher told me—

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Mr. Mathews: Which dispatcher?

Trial Examiner: You may answer

The Witness: Hatcher.

Q. (By Mr. Avedon) What did you say to Hatcher, what did he say to you? A. On arriving to work Dispatcher Hatcher told me that Meek wanted to see me in his office.

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Q. Did you see him? A. I went to Mr. Meeks' office, told him that Mr. Hatcher said he wanted to see me. And he told me, "I didn't want to see you, Ernie Fisk wanted to see you, from the General Office." He said, "Just a moment, I'll dial him and tell him you're here."

Q. Did you talk to Mr. Fisk? A. In a few minutes Mr. Fisk came over.

Q. To the office, or was this on the phone? A. Mr. Fisk came over to Mr. Meeks' office.

Q. All right. A. And I was sitting in Mr. Meeks' office and he tapped on the door and motioned me out into the lobby or the outside of Mr. Meeks' office and told me that he wanted me to know that it wasn't any of the company's business to know of the problems between myself and Mr. Craig and he was going to leave town and I had my clipboard with me that I use in picking up and delivering freight with a yellow card on it and I started writing down the date and the time that Mr. Fisk was speaking to me and what was said.

Q. Uh-huh? A. And I turned around and looked and Mr. Fisk was gone.

Q. Subsequent to this time were you expelled from the U.T.E.? A. Yes, sir.

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Q. When was that? A. The following Sunday, October the 15th.

Q. You were expelled from the U.T.E.? A. As I recall.

Q. All right, after your expulsion from the U.T.E. did you become active in the Teamsters Union? A. Yes, sir.

Q. What action did you take? A. I started to signing up other employees, talked to them, telling them about the advantages that the Teamsters Union had and it didn't have anything with the U.T.E. The U.T.E. was more or less a fake union.

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Q. (By Mr. Avedon) What else did you do for the Teamsters? A. I signed up the employees at Red Ball Motor Freight and explained to them that my experience with the U.T.E. and I attended meetings called by the officials of the Teamsters Union. I was elected at a meeting to be the Union Steward for the Teamsters Union at Red Ball dock.

Q. You were elected what? A. The Steward.

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Q. Prior to the election the National Labor Relations Board held did you attend a meeting of the drivers attended by Mr. Fisk and Meeks? A. Yes, sir.

Q. When was that meeting? A. Seems to me the best I can recall it was after the first of November.

Q. Who did the talking at this meeting? A. I believe that Mr. Meeks, the best I can recall, Mr. Meeks said he and Mr. Fisk and Mr. Bickford from the General Office wanted to talk to the employees on that shift.

Q. Did Mr. Fisk talk to the employees? A. Yes, he did.

Q. What did Mr. Fisk say? A. Mr. Fisk went on to say that the Teamsters Union was out to organize the employees of Red Ball Motor Freight Lines. That they were crooks, hoodlums and gangsters and a bunch of Communists and at that point I told Mr. Fisk that I objected to him calling Teamsters Communists. I didn't think he could prove it. We had fought for this country and I didn't believe that a man should be accused of anything unless he could prove it.

Q. Did Mr. Fisk say anything to this? A. He didn't at that time.

Q. Did he subsequently say anything to that? A. At the close of his talk to the employees on that shift he said that he wanted to apologize to Shamblin for saying the Teamsters were Communists.

Q. After the meeting did you have any talk with Mr. Fisk? A. Mr. Fisk said that that would be all and asked me to stay. He wanted to talk to me.

Q. What did he say to you? A. He said he couldn't understand what was wrong with me.

Q. Uh-huh? A. And I told him that I liked my job at Red Ball Motor Freight Lines and I had done the best I could to make an employee and I went out on my own time and picked up one of his units that was picked up by the Police out on the highway and returned it to the dock at no charge. I was not paid a thing for it. My problem was with the U.T.E. and working conditions at Red Ball.

Q. Did Mr. Fisk say anything further? A. And he said, "If you want the Teamsters Union I'll help get you transferred to Denver, Colorado, where they have a contract."

Q. Did you say anything to that? A. I said, "No, Mr. Fisk, I'll just stay in Dallas, Texas, and work under Teamster contract here."

Trial Examiner: Work on the Teamster contract here?

The Witness: Work under a Teamster contract here.

Trial Examiner: Work under?

The Witness: The best I recall.

Q. (By Mr. Avedon) This was before the U.T.E. election, is that right? A. Yes, sir.

Trial Examiner: For the U.T.E. election?

Q. (By Avedon) Before the Teamster U.T.E. National Labor Relations Board election? A. Yes, sir.

Trial Examiner: Was this conversation before the National Labor Relations Board election?

Mr. Avedon: Before the U.T.E. certified the Union.

Mr. Schoolfield: Did the witness testify to that?

Mr. Avedon: I asked him if it was and he said yes.

Q. (By Mr. Avedon) Now, were you an observer at the National Labor Relations Board election? A. Yes, sir.

Q. Where were you an observer at? A. Dallas, Texas, on the dock at Dallas, Texas.

Q. Who were the other Teamsters' observers there? A. William Clem and Gordon Hodgkins.

Q. After the election were you out of work for a period of time? A. Yes, sir.

Q. How long were you out of work? A. Approximately three months.

Q. What was the cause of that? A. I had two operations.

Q. When did you return to work? A. The best I recall it was March.

Q. If you don't know the exact date give us your approximation. A. The best I recall I returned to work on March the 19th.

Q. When did you start working regularly? A. March 23rd.

Q. Directing your attention to the end of March, do you recall an incident with Mr. Fisk and Mr. Lane? A. Yes, sir.

Q. When was that? A. It was the next day, an employee,

Horace Limbo, was fired by Red Ball Motor Freight Lines. The next morning, I believe it was in March—

Q. What happened?

Mr. Mathews: I'm going to object to any terminology that Limbo being fired. He was the one that resigned.

Trial Examiner: In place of say he was fired say he was terminated.

It was the next day that you had this conversation?

The Witness: Yes, sir.

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Q. (By Mr. Avedon) Where did this conversation take place? A. It started on the employees' parking lot at the Red Ball Motor Freight Lines Parking Lot.

Q. What happened? Who was there and what was said?

A. I came in onto the parking lot and several employees came in about the same time, went to work on the same shift as I did, and they in turn came to me and asked me—

Q. I don't want to know what their conversation with you was. Were there a number of employees with you? A. Yes, sir.

Q. Then what happened? A. We was standing near my pickup truck that I parked on the parking lot and I noticed that Mr. Fisk and Mr. Lane were coming from the General Office of Red Ball out to the parking lot.

Q. Uh-huh? A. And they came out to where we were at and Mr. Fisk said, "What's the trouble out here, Joe?", and I said, "We were discussing the tires on my pickup."

Trial Examiner: Discussing what?

The Witness: The tires on my pickup, they were pretty worn.

Q. (By Mr. Avedon) Mr. Fisk, did he say anything to that? A. Mr. Fisk said, "Don't kid me, Joe. You're out here with that Teamster trouble-making business."

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Q. Anything else? A. Yes, sir. You mean Fisk?

Q. Yes. A. Fisk said, "Joe, what's wrong with the em-

ployees?", I said, "Mr. Fisk, they don't like it because they fired Limbo."

Q. They don't like it because they— A. Because they terminated Limbo.

Trial Examiner: Well, just call it what he said.

Mr. Schoolfield: Yes, what did he say?

Q. (By Mr. Avedon) What did you say? A. I was speak- of what I said.

Q. Yes, you tell us what you said. A. I said, "Mr. Fisk, they don't like it because you terminated Limbo and they're dissatisfied with the working conditions on the Red Ball dock."

Q. Did you use the word "terminated" or "fired"? A. I used the word "fired."

Q. Was anything else said? A. Mr. Fisk said, "I'll have you know we didn't fire Limbo."

Q. All right. A. I said, "Well, it's the same thing."

Q. Did Mr. Fisk say anything to you? A. Yes, sir. We walked toward the dock where I was intending to go to punch in and go to work and Mr. Fisk and Mr. Lane told me to go on toward the dock and Mr. Fisk asked me if I

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was so dissatisfied at Red Ball why don't I resign, why don't I quit.

Q. Uh-huh. A. All it would take is a signature.

Q. Did you say anything to that? A. I said, "Mr. Fisk, I do not want to quit Red Ball Motor Freight Lines. Mr. Nixon lost the election to Mr. Kennedy and they did not run him out of the country.

Q. Was anything else said at that time? A. He walked on to the dock and Mr. Fisk asked me if I was dissatisfied with the conditions and I said, "That is right, it's like a dictatorship to me and in turn said why don't you just go on to Cuba", and that was the end of the conversation.

Q. Now, on April 6, 1962, did an accident occur to a vehicle you were driving? A. Yes, sir.

Q. Would you tell us what happened, what was the damage?

Trial Examiner: What date was this?

Mr. Avedon: April 6th.

A. The best I recall, that is right.

Q. (By Mr. Avedon) Would you tell us what happened?

A. I had taken a Red Ball trailer which was dispatched by the dispatcher, C. W. Hatcher, with the six-wheel unit to the Sunshine Biscuit Company, via some type of warehouse, and I picked up a warehouse worker as a helper, someone I don't know.

Q. Uh-huh. A. To go and help load a load at Sunshine Biscuit Company, Dallas, Texas.

Q. What happened? A. I picked the helper up at this warehouse and proceeded on to the Sunshine Biscuit Company dock. I pulled up behind their dock and stopped my truck and the helper got out and I got out and I went into the office to find out where the shipper wanted the trailer spotted to load this particular shipment of freight. I came back out, the helper unlatched my doors in the back of the trailer and I walked around the trailer and noticed they were unlatched. They were unlatched and pushed back to the side.

Q. Uh-huh. A. I got into my tractor and proceeded to back up to the dock and backing towards the dock I was in an angle to where my right side of my trailer was not visible at all. I backed across two sets of railroad tracks which was not level. They were real low, that was not a crossing, regular City or street crossing and the trailer bumped, bouncing the door on the right-hand side of the trailer, came unfastened and swung around and struck the dock and broke three hinges on the trailer door.

Q. Did you report this accident? A. I immediately went in and called the dispatcher, Hatcher, advised him of the

accident, what had happened, what I was to do.

Q. What were you told to do? A. I asked him about the merchandise I was to pick up, what I was to do about the accident if I wanted to send a man down to make a report on the accident. He said, "Just a minute and I'll see," and I could hear what sounded like him on the intercom. He was talking to someone and he said, "Joe, just bring it on in and take it to the shop."

Q. Did you bring the tractor and trailer into the shop?
A. Yes, sir.

Q. Do you know what it cost to repair the tractor?

Trial Examiner: Was this or any part of the accident a reason for the discharge of this person or just failure to make pick-ups as he was supposed to?

Mr. Mathews: It didn't actually have anything to do with his discharge.

Trial Examiner: Then why spend time on it?

Mr. Avedon: Well, the reason that they gave—

Mr. Mathews: Besides, it was a damaged trailer, not the tractor.

Q. (By Mr. Avedon) Do you know what the cost of the damage was?

Q. No, that isn't my question. The day after the accident did you have a conversation with Mr. Lane? A. Yes, sir.

Q. Would you tell us what was said? A. I arrived at the terminal at 5:00 o'clock that morning, a.m.

Mr. Mathews: Now, Mr. Examiner, I'm going to object unless it's connected up. He first said that he had a conversation with Mr. Lane when he arrived back at the terminal on the date of the accident.

Mr. Avedon: Then I asked him if there was another conversation the next day with Mr. Lane. I didn't ask him what went on in that conversation.

Trial Examiner: All right, go ahead.

Q. (By Mr. Avedon) What did Mr. Lane say to you and what did you say to Mr. Lane? We're talking about the next day. Five o'clock in the morning when you came to work. A. I reported to his office and he said, "You're late. That is usual of the Teamster Union." I said, "Well, I don't think I am. I punched in at the time clock at 5:00." And he said, "Joe, I have reviewed this record and I have found that you were negligent in the accident." And I said, "I don't see how I could be. The only way I could have prevented it is would have been to get out and hold the door open and someone else back the truck in."

Q. Was anything else said in this conversation about yourself and this activity around the area?

Mr. Schoolfield: I'd like to object. Let's have the conversation.

Trial Examiner: What else was said?

The Witness: Mr. Lane said that I was just a trouble-

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maker out on the dock. Keeping the men all in an uproar all the time and that I was to go out there and go to work and not talk to anymore employees. Not to fool with anymore employees and when I got off work I was to go home and leave the Company premises and I could go back out and go to work.

Q. (By Mr. Avedon) Did he say anything else? A. Yes, sir. He asked me if I wanted to quit Red Ball Motor Freight.

Q. What did you say to that? A. I said, "No. I do not want to quit." I again said that Nixon lost the election to President Kennedy but he didn't leave the country. I did not want to quit.

Q. Was the subject of Mr. English brought up? A. Yes, sir.

Q. What was said? A. Mr. Lane said, "I understand you have been making some remarks about the Company officials. Mr. English and Mr. Fisk."

I stated, "I don't know what you're speaking of", but I said I was ashamed of Mr. English for being a part of this false Union and I would say it again that I was ashamed of it.

Trial Examiner: Who's Mr. English?

Mr. Mathews: Chairman of the Board of Red Ball Motor Freight.

A. I beg your pardon. Mr. Lane said that I had made re-

marks about the men I work for.

Q. (By Mr. Avedon) Did you say anything to that? A. Yes, sir. I said, "I don't know what you mean, but I did say that I was ashamed of Mr. Henry English. That I do not work for Mr. Henry English, I work for Red Ball Motor Freight Line."

Q. Was the U.T.E. discussed at that meeting? A. Yes, sir.

Trial Examiner: This was a conversation, it wasn't a meeting.

Q. (By Mr. Avedon) This conversation. A. Mr. Lane said to me that the U.T.E. represented men on the dock and not myself and that I was causing the trouble among the men. I said, "Mr. Lane, I have calls from the men as late as midnight at night that they think that you're going to fire all the men that have taken part in the Union—Teamster Union election."

Trial Examiner: What did he say in reply to that?

The Witness: He said, "I know nothing of that." And I said, "The officers of the U.T.E. would not honestly represent the members out there on the dock. They come to someone else. Lee Fry and J. C. House, Business Repre-

sentatives for the U.T.E., would not honestly represent the men."

Q. (By Mr. Avedon) Did Mr. Lane say anything else?
A. I don't believe so. As best I recall, he didn't say anything further.

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Q. Was the subject of trouble mentioned? A. Yes, sir, he just said I was a troublemaker out there among the men.

Q. Anything else that you can recall of this conversation? A. That is all I recall.

Q. Now, in April of '62, was a change made in your job?
A. Yes, sir, I was placed on what was known as a hotshot driver, picking up loads, volume shipments on a six-wheeled unit to a route, running a route within a certain area.

Q. What does a hotshot run involve? Would you explain that? A. A hotshot would be where you go anywhere to pick up shipments loaded to ride, volume shipments, mostly,

Q. Is that pretty much straight load shipments? A. Yes, sir.

Q. What kind of a run were you put on? A. I was put on a route where you picked up all LTL or small shipments in addition to several pieces. Freight going to a number of different locations.

Q. What is LTL?

Mr. Mathews: I'll stipulate with you it's less than truckload.

Trial Examiner: And a straight load is a truckload, is that it?

The Witness: Yes, sir, or a volume shipment, I believe

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a volume shipment is considered you might say straight load.

Mr. Mathews: Not necessarily, Mr. Examiner.

Trial Examiner: May not be a full load?

Mr. Mathews: It depends on the tires. It could be as low

as three thousand pounds and carry a truckload weight on government shipment it could carry a straight rate.

Trial Examiner: Well, a truckload you pick up a truckload at one place?

The Witness: That is what I mean by a full load. Mostly one consignee.

Q. (By Mr. Avedon) And when you picked up the freight load, where would you take the freight? A. I would take it back to the terminal.

Q. How long had you been on that hotshot run before you changed? A. Mostly since I was at Red Ball.

Q. Was the new job that you were put on easier or more difficult than the straight load run? A. It was considerably more difficult.

Q. In what way? A. You're involved in handling many different shipments of freight at the different places, different types of freight. Each shipping place had a different method of shipping the freight out, giving their freight to the carriers, picking it up.

Q. Was time also involved? A. You have a number of customers to make at a certain time. They close and you have to be there or they get very angry at you.

Q. What type equipment is usually used for City run? A. Usually that is what is known as a bob-tail truck or small trailer truck.

Q. When you say small, what would be the length of the trailer? A. Anywhere from eighteen to approximately twenty-eight foot, usually a single short trailer that is not used for over-the-road service.

Q. After this change in your run, what type of equipment did you use to make these runs? A. I was told to get a road trailer from the dock foreman.

Q. And a road trailer is how long? A. They're mostly forty foot long, it is few trailers in service—it would be less than forty foot but most of them were forty foot trailers.

Some say they measure thirty-nine foot inside. I don't know.

Q. Directing your attention to April 25th, 1962, did you have a pick-up at Westinghouse Electric? A. Yes, sir, I did.

Q. What was the pick-up? A. I was to make a pick-up at

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Westinghouse Electric, that was my second pick-up, you might say, I stopped back by to get what late orders he had coming out and waited as late as possible to get in there to make this pick-up and I—this elephant had promised him.

Q. How many shipments were involved in this Westinghouse pick-up? A. I would estimate from a dozen to twenty.

Q. Separate shipments? A. Yes.

Q. How many cartons would be involved? A. I'd say it would be two hundred or better.

Q. About two hundred cartons? A. Yes, sir.

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Q. (By Mr. Avedon) You had a pick-up at Westinghouse? A. Yes.

Q. How many different shipments did you have at this Westinghouse pick-up? A. I would estimate from twelve to twenty.

Q. Separate and distinct shipments to different consignees, is that right? A. That is right.

Q. How many different cartons in the total shipment? A. I would estimate it was two hundred cartons.

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Q. (By Mr. Avedon) Did you receive all of the shipments that you were supposed to pick-up? A. No, sir, I did not.

Q. What happened? A. The fork lift driver that was bringing me the freight at Westinghouse Electric is stacked

on pallets that is used to pick up with a fork lift and they bring them to the back of your truck and push them up in your truck. The fork lift driver checks them off as he stacks them in his truck.

Q. Uh-huh. A. I had my bill of lading, I was checking them off as he was stacking them in my truck and I got it all checked off and stacked. All that the fork lift driver had brought me.

Q. Uh-huh. A. And I said—the fork lift driver was Leroy—and I said, “Leroy, this Port Arthur shipment, I haven’t checked off yet.”

Q. How many cartons? A. Fifteen.

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Q. Did you have a helper at that time? A. No, sir, I did not.

Q. What time was this pick-up being made? A. It was between four and four-thirty, I just—

Q. What time does Westinghouse close, if you know? A. Four-thirty.

Q. Then what happened next? A. I told Leroy that I had not checked the Port Arthur shipment on my truck and he said, “You must have, it was all in the Red Ball stack.” I said, “I have not checked it on the truck.” He said, “Well, just take all of the shipments to the dock and break it out and if you don’t have it pick it up in the morning.”

Trial Examiner: Who’s Leroy?

The Witness: The fork lift driver at Westinghouse. He told me that it was time for them to close.

Q. (By Mr. Avedon) Did you go back to the terminal? A. I made other pick-ups and then went back to the terminal.

Q. You made other pick-ups in the interim? A. Yes, sir.

Q. The next morning did you go back to Westinghouse? A. Yes, sir, I did.

Q. On what stop was that? A. First stop was Westinghouse.

Q. The next morning when you went back to Westinghouse did you do that of your own accord? A. I was directed, it was my route. The first stop was to go to Westinghouse.

Trial Examiner: In other words, nobody directed you on this next morning, this was ordinary?

The Witness: Yes, sir.

Trial Examiner: You went without being told by anybody?

The Witness: I was given my route and card, I went to the dock office to get a piece of equipment to see what piece of equipment to take to Westinghouse.

Q. (By Mr. Avedon) That morning, was anything said about this Westinghouse fifteen carton shipment to you by any Company official of Red Ball? A. The next morning?

Q. Or that night when you checked in? A. No, sir.

Q. The morning when you went on your regular route, was anything said by any Company official? A. No, sir.

Q. When you got to Westinghouse what happened? A. I backed into the dock at Westinghouse and Leroy came out, the fork lift operator at Westinghouse of the shipping department, came out and said, "Joe, you was right, you did not get the Port Arthur shipment, it's setting back up there

in the aisle. We had set it off to the side."

Q. Did you get those fifteen cartons? A. I immediately went to the telephone, called the break-out foreman at the terminal.

Q. Who is the break-out foreman? A. Jim Hitt.

Q. What did you say to Mr. Hitt? A. I said, "Jim, are you checking short fifteen cartons out for Westinghouse for Port Arthur?" And he said, "Yes, we are." And I said, "Are you holding the bill of lading", and he said, "No, I am not, I gave it to Mr. Lane."

Q. He gave it to who? A. Mr. Lane.

Q. At this time that you picked up this fifteen cartons at Westinghouse, did you pick up any other cartons?

A. Yes.

Q. In other words, there were regular shipments there in addition to these fifteen cartons? A. Yes, sir.

Q. Did Mr. Hitt say anything about this Westinghouse shipment? What to do with it? A. He advised me to bring it in to the dock.

Q. Did you go back especially with it or did you make the regular run? A. No, sir, I continued loading what West-

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inghouse had for Red Ball. I loaded the fifteen cartons at the rear of the trailer. I carried it into the dock, backed it up to the dock, unloaded the fifteen cartons on a four-wheel buggy myself and told the dispatcher Hatcher here was those fifteen cartons that was short for Port Arthur. He said, "What do you want me to do with them?" He said, "Just leave them there and we'll handle them."

Q. The night before when you didn't—did you sign the receipts for these twelve to twenty shipments? A. Yes, sir.

Q. Did you sign for this Westinghouse shipment that you didn't pick up? A. Yes, sir.

Mr. Mathews: Do you mind using bill of lading?

Q. (By Mr. Avedon) Did you sign the bill of lading for this Westinghouse shipment? A. I signed the bill of lading with the others.

Q. And that was the one you were telling us about? After you brought this shipment back, was anything said to you that day about the shipment? A. No, sir.

Q. Between April 12th and May 1, was anything said to you about the Westinghouse shipment? A. No, sir.

Q. On May 1, did you have a pick-up at White's Auto Supply? A. Yes, sir.

Q. What was involved there? A. I had a pick-up which was to be the second pick-up that day. That was always the second pick-up which was delayed just before closing time to get what orders had come out, you see.

Q. What time was this at White's? A. It was approximately 4:30, I'd say.

Q. What time does White's close, if you know? A. Five o'clock.

Q. Now how many separate shipments did you have to pick up at White's? A. When I arrived back to give the customer that pick-up he had a number of shipments that had come out which I would estimate between eight and fifteen.

Q. Eight and fifteen shipments? A. Yes, sir.

Q. Would each shipment have a separate bill of lading? A. Yes, sir.

Q. How many items would there be total in this eight to fifteen shipments? A. They would be all together and the total would be possibly three to four hundred.

Q. Three to four hundred different sized cartons? A. Yes, sir.

Q. Did you receive all of the items at White's that you had bills of lading for? A. I thought I had, evidently I didn't.

Q. What didn't you receive, do you know? A. Six tires and a sign, I believe.

Q. Did you sign for that? A. Yes, sir.

Q. Why didn't you receive it? A. I thought I had it. I had checked it off and the best I can remember I had checked it off and just failed to go back and get it.

Q. Did you bring the trailer in after making this stop. this pick-up? A. Yes, sir.

Q. After a trailer is brought into the Red Ball dock for

City pick-ups what happens to the merchandise? A. They assign a break-out man to the truck.

Q. Uh-huh. A. To break it out and separate it according to towns.

Q. Do they check the freight as it comes off, is that right? A. Yes, sir.

Q. Did you report for work May 2nd? A. Yes, sir.

Q. Did you talk to Mr. Lane on May 2nd? A. Yes, sir.

Q. Would you tell us where and what was said? A. Mr. Lane said that he had a bill of mine and I had mis-checked some freight at Westinghouse Electric going to Port Arthur, Texas. Fifteen cartons and that he wanted to tell me that Red Ball pick-up and delivery men were supposed to be qualified to check and handle freight and I had lost the freight at Westinghouse Electric.

Q. This is the April 25th shipment? A. Yes, sir.

Trial Examiner: In other words, he criticized you for this Westinghouse business the week before, several days? A. Yes, sir. Several days before.

Q. (By Mr. Avedon) Did Mr. Lane say anything else?

A. Yes, sir again he said that I had something else on my mind and that I must have not been thinking of my duties.

Q. Did he say what you had on your mind? A. He said I was continuing to make trouble with the employees on the dock at Red Ball.

Q. Did he say anything else? A. He said again if I was dissatisfied that he would like for me to quit.

Q. Did you tell Mr. Lane what had happened at Westinghouse? A. I explained to Mr. Lane I had checked the freight and told the shipping man at Westinghouse that I had not checked his Port Arthur shipment on my truck.

Q. Was anything else said at this meeting or this conversation? A. Mr. Lane said that I was making trouble on

the dock and that was the reason I had mis-checked the freight and he wanted to tell me right then that if I made another mistake of this nature that I would be fired from the Company.

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Q. (By Mr. Avedon) Have any company officials or dock foreman spoken to you about the failure of other drivers to pick up freight? A. Yes, sir.

Q. Would you tell us what happened?

Mr. Mathews: I'm going to object to this until the dock foreman is identified.

Q. (By Mr. Avedon) Would you tell us who it was and what they said? A. The foreman, Jim Hitt, has told me that. Usually they will allow you to go back the next morning and pick up your merchandise.

Q. When was the conversation, do you recall? A. The best I recall he told me that was in the middle of 1961.

Q. What is dead-head freight? A. Dead-head freight is freight moving without a revenue billing, the original billing on it.

Q. Would that include freight that had not been picked up? A. Yes, sir.

Q. Originally when it was supposed to? A. Yes, sir.

Q. Have you ever picked up dead-head freight yourself? A. Yes, sir.

Q. How many times? A. Estimate half a dozen, six times.

Q. Six times?

Trial Examiner: Over what period? When you were doing this pick-up or before that when you were on straight loads?

Mr. Mathews: Mr. Examiner, may we go off the record?

Trial Examiner: Off the record.

(A discussion was had off the record.)

Trial Examiner: On the record.

Q. (By Mr. Avedon) You heard the Trial Examiner ask you that question, I don't think you answered it.

Trial Examiner: I say, these other previous incidents you've referred about picking up merchandise which had not been picked up and should have been picked up. As I understand it happened half a dozen times. I said over what period of time?

The Witness: I would have to estimate, sir, if a shipment of freight is short someone will go back the next day and I've been involved I'd say a number of six times in a year.

Trial Examiner: During the year previous to your discharge? A. Yes, sir.

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Q. (By Mr. Avedon) On May 2nd, did you make a run?
A. Yes, sir.

Q. Were you given a dead-head freight bill that morning?
A. Yes, sir.

Q. For what? A. Oh, six tires and one carton at White's Warehouse at Farmers Branch.

Q. Did you go to the White Warehouse? A. Yes, sir.

Q. Did you pick up the freight? A. No, sir, I went to pick it up but it wasn't there.

Q. Did you see a bill of lading? A. I asked the shipping clerk where the freight was and I was instructed with a dead-head bill of lading to pick up the six pieces of freight I had left out of there the day before and the shipping clerk notified me that someone had already picked it up.

Q. Did he show you a bill of lading? A. Yes, sir. I asked her who picked it up and she dug out a bill of lading signed by S. J. Moonie.

Q. What's Mr. Moonie's job? A. Mr. Moonie is in charge of all OS&D—over, short and damaged at Red Ball.

Q. What time did you get to White's? A. That was, I would say, about 10:30, the best I recall.

Q. And when you got out there the freight had already been picked up? A. Yes, sir.

Q. Is Mr. Moonie related to Mr. English?

Mr. Schoolfield: I'd like to object to this on materiality.

Trial Examiner: Sustained.

Q. (By Mr. Avedon) Had you ever heard of Mr. Moonie going out to make a pick-up before? A. No, sir, I have not.

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Q. (By Mr. Avedon) After this pick-up that you attempted to make at White did you subsequently go back to the Red Ball terminal on May 2nd? A. Yes, sir.

Q. Did you see Mr. Lane there? A. Yes, sir.

Q. Tell us what was said. What time was this? A. I arrived at the terminal between six and seven o'clock.

Trial Examiner: May 2nd? A. May 2nd.

Q. (By Mr. Avedon) In the evening, is that right? A. I turned my bills in on the freight I had picked up that day and the foreman, Jim Hitt, told me that Mr. Lane wanted to see me in his office. I went up to his office and I walked in and there sat Ted Lane, Mr. Bailey, and Wayne Fledge. I sat down and Mr. Lane says, "Now, what I told you this morning I find that you had left freight at White's Warehouse. I'm terminating you at this time with your vacation pay and here's your check and keep walking.

Q. You were given a letter at that time? A. Yes, sir, I recall being handed a letter at the time that I walked in the office which I never opened.

Q. You ever seen this letter before? A. Yes, sir, I saw

this letter after I was fired.

Q. Is that the letter you were given on May 2nd? A. Yes, sir, that was the letter I was handed May 2nd at the time I was given my check.

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Q. (By Mr. Richards) Did you have a special time for picking up at Westinghouse or White's? A. Yes, sir. I made them one time in the morning, one time at lunch and then I would go back to get their late shipments in the afternoon.

Q. I gather—when you are assigned a pick up and delivery route are you given times at which to make the pick ups or are you merely told to service these particular customers?

Mr. Schoolfield: I object to the leading question, please.

Trial Examiner: He may answer.

The Witness: I was given the route card and the next day I explained to Mr. Lane what the customers wanted. He told me to work them in the best I could and at times it was more or less my duty to serve those customers.

Q. (By Mr. Richards) Did the route card you were given specify the times on it or did it specify the customers?

A. It specified the times when he first gave it to me but I had a conversation with him.

Q. And the times it specified, what were they, if you recall? White's and Westinghouse? A. I only lasted a few days on that route. I just don't remember.

Q. Do you recall—do you recall, what date did you take

over this route? A. Seems to me it was about the middle of April or later. I just don't recall.

Q. Your best recollection, it was in the middle of April or later, is that correct? A. Yes, sir.

Q. Mr. Shamblin, I want to hand you something and ask

you if you can identify it or if it is familiar to you. A. Yes, sir.

Mr. Richards: I'd like to ask the Reporter to mark this as Charging Party's Exhibit No. 2.

(The above document referred to was marked Charging Party's Exhibit 2 for identification.)

Q. (By Mr. Richards) Mr. Shamblin, I'd like to hand you what has been marked C.P. 2 and ask you if you recall the circumstances under which you saw this Exhibit and if you will, describe the circumstances for us? A. Yes, sir, that was presented to me on the day after I had talked to Mr. Meeks and J. P. House, representative of the U.T.E., the evening before.

Q. Just a second. J. P. House you say was a representative of the U.T.E., is that correct? A. He's Red Ball's representative for the U.T.E.

Q. I don't think he's a U.T.E. representative for Red Ball driver's. A. He's from Red Ball, yes, sir.

Mr. Richards: I don't think you're claiming he's an employer or officer of Red Ball.

Mr. Schoolfield: We stipulate he is the Red Ball U.T.E. representative.

Q. (By Mr. Richards) Mr. Meeks was the terminal manager at Red Ball at the time? A. Yes, sir.

Q. What happened on the evening before that brought about this particular thing as you recall? A. Well, since I wrote the letter to Mr. Craig and sent a copy to Red Ball Motor Freight Lines they had cut my hours.

Mr. Schoolfield: I'd like to object to this testimony.

Trial Examiner: Let's don't go too much into this.

You received this on the date that it has, October 19th?

The Witness: I believe that is right, sir.

Trial Examiner: And the previous day you had a conversation with Mr. Meeks?

The Witness: Yes, sir.

Mr. Schoolfield: What was that conversation, we've no objection to that.

Q. (By Mr. Richards) Joe, if you will, relate to us what conversation you had with Mr. Meeks, the day prior to that particular memo that led up to this. A. I was sent home on a round seven hours a day which was short of a normal

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day's work that I had been getting and the other employees had been getting and I saw J. P. House sitting on the dock as I went home. I complained to J. C. House about it and he said, "Aw, we'll take care of it.", and I said, "Take care of it hell, I'm losing money. There's the man in there, let's go talk to him." We went in and sat down and Mr. Meeks wanted to know what the trouble was and I told him that he was discriminating against me and I was not getting a normal day's work and I didn't think it was right. And he jumped up out of his chair and he said, "Goddamn, don't you pull that Teamster stuff on me." And I said, "I'm sorry, Mr. Meeks, I just feel that you're riding me." And he said, "Okay, Joe, I'll try to see that it don't happen any more." And the next morning I went to work and I worked on the dock all day. My usual job was picking up and delivery and required to transfer a load of coffee and never left the dock.

Q. You were required to do what? Transfer a load of coffee? A. Yes, sir.

Q. What does that mean? A. It was a straight load of coffee coming through from another location going north. I believe the load was going to Denver. They backed two trailers up side by side and said, "Transfer that load of coffee."

Q. Take it off one and put it on another? A. Yes, sir. Then, about four o'clock that afternoon Mr. Hatcher, the

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dispatcher, came down with this note, told me that Mr. Meeks wanted me to sign the note and I looked at it and I

said, "No, tell him to sign it himself. I don't want to sign this."

Q. That is Charging Party's Exhibit 2, this note here?

A. Yes, sir.

Q. Did Mr. Hatcher at that time say what he meant or what the note meant by instructing Mr. Shamblin not to loiter on the Company premises after the work was complete? Did Mr. Hatcher make any comment on that? A. He just said, "Joe, I'm sorry that this has all come up but if you don't want to sign it, that's all."

Q. Mr. Meeks said anything to you all the day before about not loitering on Company property? A. Yes, sir, I recall he told me when I punched out I would have to go home and I would not be permitted to use the lunch room, I would not be permitted to wait on anyone. If I punched out I would have to get off the premises.

Q. Did Mr. Meeks give you any reason for this when you had the conversation with him? Did he tell you why he didn't want you loitering on the Company premises? A. I don't believe he did, sir.

Q. You don't recall exactly? A. I don't recall him giving me his reasons. I didn't ask him for his reasons.

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Cross Examination

Q. (By Mr. Mathews) Mr. Shamblin, is it your testimony that the accidents of June 13, 1960 and June 24, 1960, were not even discussed with you by the Company? A. Would you describe those? I don't recall those two particular accidents.

Q. Do you recall a Proctor and Gamble—running into a Proctor and Gamble unit while leaving a shipper's loading platform and running into a fire hydrant? A. Yes, sir.

Q. Was that discussed with you by the Company? A. Yes, sir, I received the letter that required me to pay for it, that I pay for the accident.

Q. You paid for that accident? A. Yes, sir. The best I remember. I know I signed an authorization.

Q. Was there any further discussion with you about this

accident? The cause of the accident discussed with you at all? A. It seems to me I was called in later and told the amount of the accident and signed authorization to pay for it.

Q. Let's go to the accident of June 24th, 1960, you remember that one? A. Not unless you will describe it.

Q. While backing into shipper's loading dock, Red Ball equipment backed into and damaged foreign truck, adjacent thereto. The cost \$45. A. At the T. O. X. dock?

Q. Probably. Did you have an accident at the T.O.X. dock in June of 1960? A. I don't know.

Q. Did you pay for that accident? A. Yes, sir.

Q. And you paid for both of those, did you? A. I signed authorization and I'm sure that the Company held it out.

Q. That was the T. O. X. Dock? A. Yes, sir.

Q. On December 14th, 1960, you recall backing into another Red Ball vehicle—no, strike that.

Do you recall an accident on the Red Ball Yard, December

8th, 1960? A. Yes, sir.

Q. Did you back into another truck or did another truck back into you? How did that happen? A. Another truck backed into me.

Q. Another truck backed into you? Well, I'll hand you Respondent's Exhibit No. 3. Do you recall that letter, Mr. Shamblin? A. Yes, sir.

Q. Did you receive it? A. Yes, sir, in the driver's mail box.

Mr. Avedon: May I see it, please?

Mr. Mathews: Sure.

Q. (By Mr. Mathews) Have you read this Respondent's No. 3 for identification? A. Yes.

Q. Do you recall receiving it? A. Yes, sir.

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Q. Your file does not reflect any either. Did you file a grievance with the U.T.E. on your termination? A. No, sir.

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Q. (By Mr. Mathews) Now, Mr. Shamblin, you testified that you signed for that freight the evening you picked up

the other shipment, didn't you? A. That is right.

Q. And when you signed for freight it means that it's on your truck isn't that right? A. I signed for the freight verbally with the shipping man that we would check to see if it was missing.

Q. You've been authorized to make verbal agreements with fork lift drivers at the dock? A. I have called in to company supervisors and been told to do exactly what I did.

Q. When? A. I would say on an average of once a year for five years.

Q. You called in this time? A. No, sir, I didn't.

Q. Do you have any idea the value of the fifteen cartons or whatever number of parcels you left at the Westinghouse dock? A. No, sir, I don't.

Q. Do you know who was responsible for that freight that evening? A. Yes, sir, I know who was responsible for it.

Q. Who was that? A. Red Ball Motor Freight Lines was responsible for it.

Q. Is that same thing true with the freight you left at White's Auto. A. Occasionally—

Q. Just answer my question, please, sir. Is the same thing not true that you left at White's dock and Red Ball was responsible for it? A. That is right, Red Ball was responsible.

Q. Mr. Shamblin, let me ask—offer you Exhibit marked G.C. 57, which is in evidence in the record and ask you to refresh your recollection on that letter.

What date did you state that that letter was sent? A. It was mailed on October the 8th.

Mr. Avedon: What year?

The Witness: 1961.

Q. (By Mr. Mathews) October 8th, 1961, who wrote that letter for you?

Trail Examiner: Did you write it or type it yourself?

The Witness: Physically I did not type the letter.

Trial Examiner: Did you dictate what is in it?

The Witness: I discussed it with the person who prepared the letter what was going in it.

Q. (By Mr. Mathews) Then my question is who was that person? A. L. N. D. Wells.

Mr. Mathews: Can we stipulate L. N. D. Wells is General Counsel for the Southern Conference of Teamsters and with which you are a subordinate? Couldn't that be stipulated?

Mr. Richards: I'll stipulate that Mr. Wells is the senior partner.

Mr. Mathews: I understand that but I've heard him testify or state it himself a hundred times and you have, too.

Mr. Richards: No, I'm not sure, I'll stipulate that our firm is on a retainer basis with the Teamsters Union.

Mr. Mathews: Well, that's fine, then it's stipulated that the firm of which L. N. D. Wells is a senior partner is on a

retainer from the Southern Conference of Teamsters and that is so stipulated.

Q. (By Mr. Mathews) And Mr. Wells prepared that letter for you, is that right, sir? A. We discussed the physical typing of the letter.

Q. Yes, sir.

Mr. Richards: Well now, I'll object to the point you are going to encroach upon the client and move that it be stricken.

Trial Examiner: It may stand. You're trying to intimate what?

Q. (By Mr. Mathews) It is your testimony that L. N. D. Wells, Jr., assisted you in the preparation of that letter, is that true, sir? A. We discussed that letter, that is true.

Q. Prior to that time it was sent out, is that right, sir? A. That is right.

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Q. (By Mr. Avedon) Would you state your name and address for the reported, please? A. Gordon Spencer Hodgkins, 2217, Piedmont Street, Irving, Texas.

Direct Examination

Q. (By Mr. Avedon) When did you first start working at Red Ball? A. In January, 1956.

Q. And what job were you hired for? A. As an over-the-road driver, line driver.

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Q. All of these—many of these reports through '59, '60, and '61, show speed in excess of 55 miles an hour. Were you ever reprimanded on the basis of any of those reports?

A. No, sir.

Q. Were you ever suspended or laid off on the basis of those reports? A. No, sir.

Q. Have you attended, ever attended any Red Ball safety meetings? A. A goodly many.

Q. Was the subject of speed ever discussed at these meetings? A. Quite often.

Q. Who would talk and when was the meeting held?

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A. Well, for one, for example, I hate to pinpoint the month, certainly not the date, but a driver had been dismissed for driving at sustained speeds in excess of 50 miles an hour. His name was L. D. Dickson, and at this meeting Mr. Dale Scruggs said although we had not been told we could, we had increased our speed, and those that drove over 50 would be in trouble, and he cited this case of L. D. Dickson, but I wouldn't say that he called Dickson by name.

Q. Who hired you when you were hired? A. Mr. Charles E. Fisk.

Q. When you were hired, did Mr. Fisk say anything about speed? A. He did.

Q. What did he say? A. During the conversation he said that the speed limit in the State of Texas was 45 for trucks, maximum legal speed for trucks was 45 miles an hour. However, there would be no complaint from the Company for speeds driven up to 50 miles an hour, although they couldn't tell us legally that we could do so.

Q. You know Mr. Harold Odum? A. I do.

Q. Did you ever hear him speak at some of the safety meetings? A. I have.

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Q. Would you tell us what he said? A. This is at the same meeting I just related. He passed a comment that the increased speed sure helped the r.p.m.'s.

Q. As a driver do you know what the term "Sure helped the r.p.m.'s" means? A. Well, I don't want to go into a whole bunch of details. If I am allowed a personal opinion, in 10th gear we're driving at an r.p.m. that was on a border-

line, and the increased speed allowed us to operate in 10th gear without lugging it.

Mr. Schoolfield: Do we have the date established for this?

The Witness: I already said that. I dislike to try to fix a month and certainly not a date, but it was immediately following the discharge of a driver by the name of L. D. Dickson.

Q. (By Mr. Avedon) What year was it? A. The best of my recollection was in the middle of last year, '61.

Q. Did you have any office with the U.T.E.? A. I was elected as a line committeeman.

Q. When was that? A. In March of 1960.

Q. All right. A. March or April.

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Q. In July of 1961, was there a U.T.E. election? A. Yes.

Q. Which side did you support? A. I supported Mr. J. D. Hester.

Q. Between 1956 and 1961, had you received any speeding citations from the police? A. Not one.

Q. In that period had you received any traffic citations? A. No.

Q. Between July, 1956— A. While I am in the employ of Red Ball or all the time?

Q. While you were employed as a driver at Red Ball. A. While I was—driving their equipment?

Q. Yes. A. No.

Q. Between 1956 and July of 1961, had you ever received any warnings from the Company for speeding? A. No.

Q. During that period had you received any warnings for log violations? A. No.

Q. After this U.T.E. election in July of 1961, were you called in to Mr. Barr. A. I was.

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Q. When was that? A. On July 17th.

Q. Do you know when the U.T.E. election was? A. The ballots were counted on the 13th.

Q. Of what month? A. July.

Q. What happened when you went into Mr. Barr's office?

A. He asked me to sit down, and he told me that he had been checking my logs and charts from a period, I beg your pardon, June 16th, through June 30th of 1961, that he had found some improper log entries, and I can't tell you exactly what those log entries were. I can just generalize on them. I believe two were to do with stopping in excess of 10 minutes and just drawing a line down on my log, and two were for stopping anywhere from 25 to 28 minutes. I think it showed only 15 minutes on duty. Not driving.

Q. Was anything said about speed at this meeting?

A. Yes. He got through talking about the logs, and he had me to sign a letter conceding these improper log entries which stated that I would be fired on the next time if I made such errors in the future, and then he pulled a chart out and handed it to me, and he said he wanted to ask me about it. I'd been doing a pretty good job for this certain period of time for several hours on the chart, then all of a sudden I got a flea in my rear, and I was doing speeds up to 55

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miles an hour in my last two and a half hours on the chart. So I explained to Mr. Barr in states where the speed limit exceeded 55 miles an hour that there was a bulletin to the effect that we could drive 55 and the speed limit in the State of Arkansas was 60, and that was the state I was in, and I was driving 55. Mr. Barr said he wasn't familiar with this bulletin, and he called someone on the phone. He was unable to reach this party, and the party answering the phone, I presume, answered his question, and he turned back and said that was so. He had a group of charts laying on his desk, and he pulled out another chart, and to the best of my recollection its tractor number was 28 on a trip from Amarillo to Dallas, and it showed speeds sustained up to

50 miles an hour with an occasional mark on the chart of straight up and straight down indicating that I had driven over 50 miles an hour. He asked me what reason there was for this. I don't recall what I gave him. I was trying to say as little as I could and get out of there.

Mr. Schoolfield: Like to object and have that stricken.

Trial Examiner: It may be stricken.

Q. (By Mr. Avedon) I assume that he—

Mr. Schoolfield: Saying as little as he could to get out of there.

Trial Examiner: Yes.

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The Witness: I knew in my mind that this tractor, 2080, was possibly recording a fast chart, that it was four miles faster on the chart than the tractor was actually proceeding. I didn't argue this point. I just—I can't recall what I said, I guess I conceded that I was speeding and went ahead and signed. Then, Mr. Barr turned around and typed up another letter concerning speeding, and I just want to point out that he made no mention of the speed up to 50 miles an hour, and he completed the letter and also had me sign this letter.

Q. (By Mr. Avedon) Did Mr. Barr say anything about other people? A. He told me at this time that I wasn't to think that I had been picked out for this treatment. That he had a number of people to see. He also told me that he and Kenneth Morgan had followed me from Clarksville to DeKalb, in their automobile, and that I had done a pretty good job. He also told me that the following night he checked me stopped at Hallsville, and this is where one of the log violations occurred. Or improper log entries, whatever you want to call them. That he had also run up on me stopped at Big Sandy, Texas, that my right door was open, and if I stopped in the future, to be sure and have my blinker indicator working while I was stopped. He said that to protect my job and to think what would happen if I got fired, and how hard it was to get a job, and that Red

Ball had hired me until the day I retired. And the best I can recollect, that was all that was said. Oh, I would like to bring out one other matter. Mr. John Barr asked me what the speed limit was of Red Ball, and I replied 50 miles an hour, I beg your pardon, 45 miles an hour, to which Mr. Barr interjected, "Yes, with a five mile an hour tolerance."

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Q. (By Mr. Avedon) Now, in the fall of 1961, the Teamsters began organizing at Red Ball, is that correct?

A. They did.

Q. Did you participate in that organizing campaign?

A. I did.

Q. What actions did you take? A. I signed an application for an election.

Q. Did you do anything else? A. I encouraged other men to do the same thing. Some did.

Q. Did you attend a pre-election meeting of Company officials before the election? A. Safety meeting you are referring to?

Q. Yes. A. Uh huh.

Q. Was the subject of the coming election discussed at

that meeting? A. It was.

Q. Would you tell us who spoke? A. A number of people spoke. Mr. Barr opened it. Mr. Barr, Mr. Dale Scruggs, Mr. Kenneth Morgan, were there in the beginning, and opened the meeting, and for a short period of time there was a conversation regarding safety, and then Mr. Fisk came in, and the meeting was turned over to Mr. Fisk.

Q. What did he say? A. Mr. Fisk went on to discuss the coming election. Told the men that if any of the men signed any applications, he realized that they were under pressure

and warned them to get these people out of his houses, referring to Teamsters.

Mr. Schoolfield: I move the reference to Teamsters be stricken.

Trial Examiner: The term may be stricken.

The Witness: If they signed applications, they didn't have to vote Teamsters. He went on to say that this story that was circulating that Mr. English didn't mind signing a Teamster contract was so much bull corn. There was a poster on the General Office lunch room where we were having this meeting. Supposedly pictures of members of the Teamsters that had been convicted for this, that and the other, and we were invited to look at it and compare them

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with the fine U.T.E. officials.

Q. Was the subject of D.A.E. mentioned? A. Mr. Fisk said that that came into the part where he said that the story that was circulating about Mr. English didn't mind signing a Teamster contract was so much bull corn. He went on to say that the Teamster contract with D.A.E. had made it a hard decision for Mr. English to buy D.A.E., and that the Teamsters had been an objecting party to the purchase of the line.

Mr. Avedon: May we stipulate that Red Ball bought out D.A.E.?

Mr. Mathews: I'll stipulate, Counsel, that Red Ball took over authority of Denver-Amarillo-Examiner, subsequently acquired all of the stock in March, 1951, the companies were finally merged as Red Ball Motor Freight, Inc., December 7th, 1956.

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Mr. Mathews: Well, Mr. Examiner, let me point out that G.C. 72 is a combination Driver's Log and trip ticket bearing date of January 31st, 1962, and it shows on the face it

was freight to hauler, and there was a big difference in the way the paper company operates as to freight destined there and freight originating there, and we will so prove before this case is over. Now, I didn't have any objection to this exhibit if he wants to put it in for whatever it's worth, but I do object to him trying to put something on this exhibit that is not on it.

Q. (By Mr. Avedon) On this trip did you make a pickup or delivery? A. I made a delivery.

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Q. (By Mr. Avedon) I show you a Driver's Daily Log which has been marked G.C. 73 which is dated 11-21-61; have you ever seen that before? A. Yes, sir, I have.

(The document above-referred to was marked G.C.'s Exhibit No. 73 for identification.)

Q. Did you make a stop at the Homer plant? A. I did. I unloaded 23,628 pounds which is signed or initialed by the Eldorado agent, and it is a claim for which I was paid on a mileage and tonnage basis.

Trial Examiner: This also was a delivery and not a pickup?

The Witness: Yes, sir, it was.

Q. (By Mr. Avedon) I offer into evidence G.C. 73. A. I would further like to say on this 23,628 pounds that it consisted of 22 rolls of paper.

Q. That you were delivering or picking up? A. That I was delivering.

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A. Yes, sir, I made another delivery at Homer, Louisiana, and I was paid for 13,958 pounds again initialed by the

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agent in Eldorado.

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Q. (By Mr. Avedon) Now, on the occasions when you

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made either pickups or deliveries at Homer, Louisiana, were you paid other than the mileage there? A. If I handled the freight in any way, I was paid on a tonnage basis. If it was freight that I didn't handle in any way, then I would be paid on an hourly basis. One hour being the minimum that I could be paid.

Q. In April, 1962, did you start making a regular Houston-Dallas run? A. I did.

Q. Could you tell me what that run was? A. It was a straight down run from Dallas to Houston. Monday, Wednesday, and Fridays, running to Dallas Tuesdays, Thursdays, and Saturdays.

Q. Did you carry a regular type of freight? A. As a general rule LTL.

Q. Now that would be a straight LTL run? A. That is right.

Q. Would you explain the difference between straight load and LTL on this run? A. An LTL load would be a minor volume shipment, but also a minor volume shipment, and LT, or all LT and a straight load we consider to be—this might be the definite term, one volume shipment.

Trial Examiner: This corresponds to the LCL in the railway business, doesn't it?

Mr. Mathews: Yes, sir.

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Q. (By Mr. Avedon) What LTL run did you have? A. I had the junior run of the two.

Q. Who had the senior? A. A Mr. P. W. Mabra.

Q. The straight load run, who would make those? A. As a general rule, the Pool Board Man, extra man.

Q. Now, on your trips to Houston and from Houston to Dallas, did you have a certain time when you would leave? A. There was no set time, we were told these two runs had

been set up to pull LTL from Houston. The first load, which was P. W. Mabra, would leave around 7:00, 8:00, or 9:00 o'clock, and I would leave from 9:00, 10:00, 11:00, 12:00, 12:30, and 12:45 a. m.

Q. What would determine when you left? A. Generally the availability of the second load of LTL.

Q. Directing your attention to May 3rd, 1962, were you in the Houston terminal at that time? A. I was.

Q. Could you tell me what you saw and what you heard in the evening? A. At approximately 6:45 p.m., I walked in to ask the cashier to cash a check for me as I hadn't been home the previous trip. He declined to do so without someone in higher authority okaying the check. I couldn't find the agent or the assistant agent, if Mr. Simpson is the assistant agent, so I walked into the dispatcher's office and

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asked the dispatcher—I beg your pardon, I wish to change that. The dispatcher was holding a conversation on what we know as the long line. It's a hookup between the major stations of the company, direct.

Q. Is that an inter-connected telephone line through to the stations? A. That is right.

Q. Who is the dispatcher? A. George Samons. I sat down at a chair in his dispatch office and began to make out the check, and I heard him say, "But Mabra is due out first," and then there was silence. I wasn't paying much attention to that. Then he said, "Well, I'll get them both out by 8:00 o'clock some way." And that was the end of the conversation. I went through this procedure of getting the check initialed, and then he told me to go find Mabra and tell him to get ready to leave, that we were both going to leave at 8:00 o'clock. Well, I went and found Mabra and told Mabra.

Q. What run did Mabra pull? A. He pulled the first load of LTL this night.

Q. Was this the usual practice? A. It wasn't the usual practice, but he had done it.

Q. And what load did you pull that night? A. I pulled the first load of LTL.

Q. What time did you leave? A. I left at 8:00 o'clock.

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Q. Was this your normal departure time? A. The closest I've been is one time. That was at 9:00 p.m., for most of the time it had been from 10:00 until after midnight.

Q. When you left Houston, did you know that Joe Shamblin had been fired? A. I did.

Q. How did you drive on your run? A. My normal driving habits.

Q. When you got close to Corsicana, did you spot anything unusual? A. When I got inside the city limits of Corsicana, Texas, four or five or six hundred yards inside the city limits on the other side of the highway, I saw a Chevrolet automobile parked headed toward Dallas, and I knew I was satisfied who it was.

Q. Who do you think it was? A. I thought it was Mr. Barr.

Q. Did you recognize the car, is that it? A. An unusual course of events had taken place. The fact that Joe was fired, the fact that I left with Mabra, the fact that a Houston-Bonham schedule, that was out before, left behind us. The fact that the sleeper schedule was due out of Houston, and it didn't pass.

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Trial Examiner: Led you to believe who was in the car?

The Witness: I thought that somewhere up the road, I'd see Mr. Barr.

Q. (By Mr. Avedon) In Houston, were there any extra men or Pool Board Men there? A. Several.

Q. And yet Mabra still took the first run out, is that right? A. I wouldn't say it was the first.

Q. He took a straight run out? A. Yes, sir.

Q. What happened after you spotted this car? A. It started up after me.

Q. What time was this? A. Approximately 12:30 a.m.

Q. 12:30 a.m. Will you tell me what you did, what happened? A. Well, I told you that I knew in my own mind who was in the car, and when I cleared the underpass, Dallas side, of course, I pulled over to the right side of the road and stopped.

Q. What were you doing? A. I stopped because I imagined it was Mr. Barr, in the car, and the car pulled up behind me, and it was Mr. Barr.

Q. What was said? A. I walked to the back of the truck, kicked my tires for something better to do, and—

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Q. Uh huh. A. —and Mr. Barr uttered some greeting and went up toward the front of my tractor. I went around the trailer and bumped the tires on the other side and went up to the side of the tractor, and Mr. Barr was looking through the container that holds the fuses and flags, and at that time Mr. Lane walked up behind me, and Mr. Barr asked Mr. Lane if he had a key to the clock, the tachometer, clocks on the truck. Mr. Lane gave Mr. Barr the key, and Mr. Barr opened the clock. He looked at the clocks, and he came back around on the near side of the tractor, and asked to see my log. He asked me if I was familiar with the company rules and regulations requiring a driver to bump his tires every 50 to 75 miles.

Trial Examiner: What do you mean, "Bump your tires?"

The Witness: Kick them. See if they still have air in them.

Trial Examiner: How can you tell?

The Witness: Let me put it this way. If you can't have a hammer, you can have a piece of iron, or you can kick them hard enough with the heel, and if it is low, you can tell that it is low.

Trial Examiner: If it's flat, I can tell.

The Witness: It has to be quite low.

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Trial Examiner: That's the purpose of kicking it?

The Witness: Yes, sir.

Q. (By Mr. Avedon) All right. A. He asked me if I was familiar with this regulation, and I immediately said that I was, and he asked to see my log, and I opened it up, and he asked me why I hadn't drawn down at the stops that I had made, and I replied that my log was current, that I hadn't had no change of duty status. I believe there were a few more words about this, I can't recall exactly what was said. It wasn't too much. And then, Mr. Barr said, "Well, we'll see you in Dallas."

Q. Was anything said about speeding at that time?

A. No, he didn't mention anything about speeding.

Q. Was anything said about radar at that time? A. No.

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Q. (By Mr. Avedon) After leaving Corsicana, where did you go. A. I proceeded to Dallas.

Q. And what time did you get into Dallas? A. Approximately 2:15 a.m.

Q. 2:15 a.m.? A. Uh huh.

Q. And what were traffic conditions at the time when you drove through Corsicana? A. It was 12:30 a.m., and it was quite late, and I would also like to say that coming into Corsicana, Texas, you proceed down a hill, you hit a bottom of this hill several hundred yards inside the city limits, and there is an upgrade for several hundred yards.

Q. When you got into the terminal, did you see any company officials there? A. I saw Mr. John Barr.

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Q. Did you have any conversation with Mr. Barr? A. He told me to go and log up and come on into Mr. Ted Lane's office.

Q. Did you go into Ted Lane's office? A. I did.

Q. Who was there? A. Mr. Lane and Mr. Barr.

Q. Did you have a conversation with them? A. I did.

Q. What was said? A. Mr. Barr told me that he had checked me by radar, and that I had been doing 35 miles an hour in a 30-mile zone, and that I had continued to speed until the first light in town. I replied that I may or may not have been speeding when I passed him, but I certainly didn't speed up to the light. I knew it was him, and I certainly wouldn't speed knowing he was behind me.

Q. Was anything else said? A. He reminded me that I had been warned concerning speeding and improper log entries the previous July, and he told me to consider myself terminated as of then, and to come by in the morning and pick up my final check.

Q. Let me ask you this—

Trial Examiner: Did you make any response to that?

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A. No. I don't believe I even said a word. I may have, but I don't think I did. Oh, I beg your pardon, Mr. Lane asked me if I had a warehouse key, and I said I did, and I handed it over.

Q. (By Mr. Avedon) Had you been doing 35 when you first entered Corsicana? A. I was.

Q. Had you slowed down?

Trial Examiner: You mean did he slow down?

Q. (By Mr. Avedon) After you got into Corsicana? A. I told you in the beginning that I intended to drive that night with my usual driving habits. I was driving 35 when I passed Mr. Barr, and I told you just now that there is an upgrading beginning at that point, and I would just slack off and then let the truck roll back to 30 miles an hour.

Q. In the years that you worked for Red Ball Motor Freight, have you ever earned any of the safe driving awards? A. Red Ball?

- Q. Yes, sir. A. Every year that I've been there.
 Q. How many years has that been? Is that since 1956?
 A. Yes. It's either six or seven, since last January.
 Trial Examiner: How common are such awards?
 The Witness: How common?

- Trial Examiner: Do most of the employees get them?
 The Witness: If you don't have an accident, a chargeable accident, then you're due a safety award, and I would say a good many men have them.
 Q. (By Mr. Avedon) During the period you worked for Red Ball, had you had any chargeable accidents? A. No, sir.
 Q. During the period you worked for Red Ball to the time of your discharge, have you ever received a traffic summons or traffic citation by the police? A. No, sir.
 Q. Since your termination have you ever been recalled to work? A. No, sir.

Mr. Avedon: I think that is all I have. I would like to see his style.

Trial Examiner: Well, we will recess for 10 minutes.

(A 10-minute recess was taken.)

Trial Examiner: On the record.

Does the union have anything?

Mr. Richards: Yes, I do have a few questions.

Direct Examination Continued

- Q. (By Mr. Richards) Gordon, I am not sure it was in Direct Examination. Is it correct that you served as an observer for the Teamsters Union at the Labor Board elec-

- tion held in November, 1961? A. Yes, I was.
 Q. For the Teamsters? A. For the Teamsters.
 Q. At the Dallas Teamsters, is that correct?
 Trial Examiner: And who else?
 The Witness: Mr. Joe Shamblin and Mr. Clem.

Q. (By Mr. Richards) You testified, Mr. Hodgkins, that you have driven, as I understand it, for Red Ball five years before you were discharged? A. I went to work for them in January, 1956.

Q. And before that time for who did you work? A. Red Arrow Motor Freight.

Q. What type work did you do for them? A. The same. I did do a little bit of delivery work for them.

Q. But primarily over-the-road driver? A. That is right. From '53 to '56.

Q. Mr. Hodgkins, you were present at the hearing room, were you not, during the testimony of Mr. Cathey? A. I was.

Q. Did you hear Mr. Cathey testify with the type of equipment he was driving on the occasion where he lost his wheels in Arkansas, wherever he lost them? A. I was.

Q. Are you familiar with that type of equipment?
A. Yes.

Q. Have you driven that type of equipment? A. Yes.

Q. Well, I will ask you this. In your opinion, Mr. Hodgkins, taking into consideration the description given by Mr. Cathey of how the incident occurred, could a person either by kicking the tires or by observation of the tires when they're not jacked up, have detected the inner tires or the lugs holding the inner tires were weak and about to break?

Mr. Schoolfield: I'd like to object to that unless this witness has had a wheel to fall off his equipment or had some experience or is shown to be an expert and a mechanic.

Trial Examiner: I think he can, and I intend to ask that question of someone. I'd like to ask it of people who are familiar with these trucks and driven trucks. Every driver, I suppose, checks these tires. Let him answer. I'd like to have other opinions.

Q. (By Mr. Richards) Go ahead, Mr. Hodgkins. A. In my opinion?

Q. Just in your opinion. A. I don't see how he could.

Q. Have you ever had experiences of your own that could give you more information on this type matter? A. I've had

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some experience of that same thing about to happen, and I've had an experience where lugs have been broken on another occasion. The lugs have been broken on another occasion. One is on a truck between Victoria, Texas, and Port Lavaca, Texas, in daylight.

Q. Yes, sir. A. And fortunately before when I left my equipment was in shape, I never would have left. I repeat it's daylight and I don't recall how I found out, or I might have looked back through the cab, and I saw the wheels were running to where there's bound to be something wrong. They're not running straight in line, and I stopped, and I saw I had that problem although it wasn't complete. In other words, most of the studs were busted.

Q. Were these outer studs or inner studs? A. No, the inner studs.

Trial Examiner: Well, how could you tell?

The Witness: Well, we had to have a mechanic out there to repair them.

Trial Examiner: But a moment ago you didn't see how just observing the inner lugs looks or not.

The Witness: I saw the wheels were out of line. I knew there was something wrong.

Trial Examiner: Well, while you were driving, you saw the wheels wobbling? Then you say you can't tell by looking.

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The Witness: No, I couldn't have told by looking.

Q. (By Mr. Richards) Well, let me ask you, Mr. Hodgkins, how long had you been on the road since your previ-

ous stop? A. Well, Port Lavaca was only 25 miles from Victoria, and I was eight miles out of Victoria.

Q. You were going from Victoria to Lavaca, or vice versa, going to Port Lavaca? A. Yes, I wasn't very far out.

Q. You had examined your equipment before you left Victoria?

Trial Examiner: That is what he said three times.

Q. (By Mr. Richards) And the inspection you had made on your equipment didn't indicate anything was wrong?

A. I had a flat tire on a tire in Houston, Texas, and I took the trailer around to the shop, mark you, I bumped my tires, took it around to the shop and the mechanics proceeded to pull the tires off with the air hammer, and we found two of the outside nuts, while they were tied on the threads, were loose because there's nothing holding them on the hub, and then there was one good one, and then another broken, one good one, and I said to the mechanic that I was glad that I had had a flat, and he said, "Yes, you wouldn't have gotten very far, and we would have had to come pick you up. You would have lost two wheels."

Q. And so as I understand it, the outer wheels were still

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on the wheels? A. Yes, but they were loose.

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Q. Mr. Hodgkins, you testified, I think, about receiving a warning notice or rather two warning notices from Mr. Barr in 1961, do you know the names of any other drivers that received warnings at that time? A. Yes, sir, Mr. Hester had received a warning for speed prior to that time, but he got one around the same time I did for logs. Mr. Cathey received one for logs and for speeds, and Mr. P. W. Mabra was called in, and he didn't receive a letter. There was a discussion about an improper log entry, and he was

never recorded for it, and that was the end of it as far as the company is concerned.

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Q. (By Mr. Schoolfield) Excuse me.

Mr. Hodgkins, you gave a statement on August 29th, 1961 whereby you acknowledged that you consistently while driving Red Ball equipment exceeded the speed limit, didn't your, sir? A. I did.

Q. Is it not true that this statement was given in the Hester Arbitration Proceeding? A. I don't know what it was used for, I knew Hester would need some help, and I wanted to help him.

Q. Then it could have been used in his Arbitration? A. It could have been used for anything.

Q. Did you file a grievance with the company over your termination? A. I did not.

Q. You did not contact the U.T.E. in any form, is that correct, sir? A. I did not.

Q. Or testify in reference to the Ludlow Paper Company, Mr. Hester, strike that. Mr. Hodgkins, in your testimony about the Ludlow Paper Company in reference to your unloading and loading there, did you have any help at that time? A. I did.

Q. Then you had help at loading and unloading? A. I did.

Q. There were Exhibits 72, 73, 74, and 75, do you recall those exhibits, or would you like to have them in your hand? A. Well, unless you want to go into detail on them, I might better have them.

Q. Now, 74 is the only one in which you picked up freight at Ludlow? A. Yes, that is correct.

Q. Now, that is less than a truck load pickup. Isn't it a small shipment? A. Uh huh.

- Q. Where did that trip originate from, Mr. Hester?
 A. Hodgkins.
 Q. Mr. Hodgkins, excuse me. A. In Eldorado, Arkansas.
 Q. Where did it originate? A. In Dallas, Texas.
 Q. Was that an enroute point? A. Of course it was.

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- Q. And you had help in loading that shipment? A. Yes.
 Q. On the G.C. 72, 73, and 75, they were deliveries, is that correct? A. That is correct.
 Q. Was it not an enroute point on all of these trips?
 A. Of course.
 Q. Now, did you have help in unloading those shipments?
 A. I did.
 Q. The help was from Ludlow Paper? A. Yes.
 Q. Was the substance of your testimony that you expected Mr. Barr to be following you in Corsicana in May of 1962? A. I don't believe I testified to that. I expected to see Mr. Barr somewhere between Houston and Dallas.
 Trial Examiner: I think that was it. When he got there, he thought he might see Mr. Barr when he got there.
 Q. (By Mr. Schoolfield) Now, when did you first see Mr. Barr in Corsicana? A. When he was parked on the side of the highway, on the southbound side of the highway with his automobile in the direction of Dallas.
 Q. Was he within the city limits of Corsicana? A. He was.

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- Q. How far within? A. Well, it would be an estimate. Could be four, five, or six hundred yards. I might be wrong.
 Q. How far inside Corsicana was the first stop light?
 A. Inside the city limits perhaps $\frac{3}{4}$ of a mile, hard to say for sure.
 Q. You testified you recognized Mr. Barr's car at that time, is that correct? A. Well, I may have said that.
 Trial Examiner: He didn't say that.

Q. (By Mr. Schoolfield) What did you say? A. I believe I said it was a white Chevrolet or cream Chevrolet.

Q. You then did not connect Mr. Barr with that Chevrolet at that time? A. You darn right I did.

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Redirect Examination Continued.

Q. (By Mr. Richards) On this Ludlow Paper Company in Homer, Louisiana, is that a paper mill, or what is it? A. I am not sure. It's Ludlow Plastic. They have paper and put plastic on the outside, and things like that.

Q. You were asked if you had helped in loading that load there. A. Yes. Loading and unloading.

Q. Could you describe the weight of the individual pieces of freight that you were loading on that particular occasion? Can you by looking at the exhibit? A. That 36,000 pounds, they were small rolls of paper.

Q. How much would they weigh, would you know? A. That's hard to say. Not a whole lot.

Q. Would it be less than 100 pounds? A. Perhaps 100 pounds.

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Q. Mr. Hodgkins, would you enumerate the number of speeding violations that are reflected in the records that you kept after Hester was discharged? Could you tell me how many instances you have there? A. Well, I can give you the instances.

Q. Just how many. A. Well, I think I might find one that reflects a correct speed limit. In other words, the legal maximums. The others are all over.

Q. Well, all I am trying to get is just the number of instances that are reflected by the notes you kept. Can you just count them up by looking at your notes? A. I've got 25.

Mr. Richards: No further questions.

Recross Examination

Q. (By Mr. Schoolfield) Mr. Hodgkins, would you keep referring to your notes and tell me if you have names on there or what you have on your notes? A. Well, let me put it to you this way, Mr. Schoolfield. These charts—if I have a name, I have gotten it from the sign-out sheet. They weren't on the charts because the charts were just lying on the desk. There's no name on them,

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Q. (By Mr. Schoolfield) Mr. Hodgkins, did you bring any of the information found on Respondent's No. 4 to the attention of Red Ball Motor Freight? A. I certainly did not.

Q. You did not? A. No.

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Mr. Avedon: It also indicates that there are no traffic citations to the driver for the accident.

Mr. Mathews: I will stipulate with you that there were no traffic citations to the driver.

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CHARLES D. MATHEWS

was called as a witness by and on behalf of the respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination

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Q. Can you tell the Examiner, starting—let's see, starting at Denver, Colorado and coming east, the sections and the units, if you know, that are covered by contracts?

A. From Denver, Colorado, via the intermediate points of Colorado Springs, Pueblo, Trinidad, Raton, New Mexico, and then on down the route through Clayton and Dalhart to Amarillo and also over a route out of Denver that runs through Boise City, Oklahoma and on into Amarillo and over the route between Amarillo, over 66 to Oklahoma City; that territory that I have just described is generally under the Teamster contract with the exception and I do not mean

to imply that there is any Teamster contract with respect to employees at Clayton, New Mexico, or at Dalhart, Texas or at Boise City, Oklahoma; that is the generally the division of our company that we refer to as the north end and as between Amarillo, Texas on the one hand and on the other, Denver, Colorado, we look upon that as the territory covered by the Teamster contract.

Q. Now, are the line drivers who drive in that territory covered by a Teamster contract? A. They are.

Q. Are the pickup and delivery or dock—city workers in Amarillo covered by a Teamster contract? A. They are.

Q. And you stated that Dalhart and Clayton were not covered—that is, you are talking about the city people?

A. That is correct. Dalhart is a commissioned agency and Clayton is a one-man operation, so to speak.

Q. How about Santa Fe, is that covered? A. Santa Fe is a union of transportation employees contract.

Q. Not a Teamster contract? A. Not a Teamster contract. Taos, New Mexico is a commissioned agency. Raton, New Mexico is Teamsters.

Q. Now, how many Teamster contracts do you have in that division or the northern section; I am talking about individual like line drivers, city drivers, mechanics and

clericals? A. Well, we have got a contract with the Teamsters Union at Amarillo and that is one local and we have got a Teamster contract at Denver, Local 961 that is over-the-road. We have got a Teamster contract at Denver with Local 17; that is pickup and delivery drivers. We've got a contract with the Teamsters at Denver, Local 775 that covers the shops.

Q. Do you happen to know— A. We've got another Teamster contract that is handled through the business agent at Albuquerque that handles some of our people at Raton.

Q. Now, sir, do you happen to know the business agent in the shop at Denver? A. Yes, Bailey.

Q. Now, did you mention the line haul operators or line drivers from Amarillo to Denver? Are they under one contract or are they under several? A. The line haul or the line drivers domiciled in Amarillo and operating out of Amarillo are under a Teamster contract and also the pickup and deliver men in Amarillo and that is the same contract.

Q. Would that be the southern conference contract? A. Yes, sir, it is.

Q. How about the line drivers going west into Denver or northwest into Denver? A. Well, there is some drivers, line drivers that operate out of Denver that are under

Local No. 961 which is—oh, I though I never would forget that.

Q. Harry Bath? A. Harry Bath and then Local 17, that is your pickup and delivery drivers. That is another contract and then your Local 775 which is your mechanics; that is actually the one who has got all of the taxi cabs in Denver and that is Mr. Bailey; he is the business agent for them.

Q. All right, sir.

Now, taking Amarillo going from Amarillo east, what

units and what contracts? A. From Amarillo extending east over our route through Childress, Wichita Falls and on into Dallas, those line drivers are under the union of transportation employees contract. Now, you didn't ask but I will state that also the line drivers operating out of Amarillo to Oklahoma City are under the Teamster contract but that is the one there in Amarillo. That is over U.S. 66 running almost due east out of Amarillo to Oklahoma City. Of course, all of our pick-up and delivery people from Amarillo on east and the entire Red Ball operation which extends as far as Shreveport, Louisiana, El Dorado, Arkansas, Houston, Texas, Beaumont, Orange, Waco and Wills Point are under the union of transportation employees contract, including the Shreveport terminal operation.

Q. Are there many different U.T.E. contracts or just

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one master agreement? A. There is one.

Q. I am looking for General Counsel's Exhibit 21 which I believe is that contract. Do you have independent recollection on GC 21? I hand you General Counsel's Exhibit 21, Mr. Mathews, and ask you if that is the U.T.E. contract that you have just testified about? A. I am now looking at what is in evidence as Exhibit GC 21 and that is the contract between Red Ball and the union of transportation employees, dated March 10, 1962. That contract was effective March 16, 1962 and it is for a period of two years.

Q. All right, sir.

Now, will you tell the Examiner the contract and union units on the Red Ball Motor Freight, Inc. (Southeastern) operation? A. Red Ball (Southeast) which I previously stated extends from Shreveport to New Orleans, Mobile, Alabama, the so-called southeast territory, which was formerly known as Couch Motor Lines, I-n-c., is under Teamster contracts and there are a number of them; I couldn't tell you exactly how many there but we have one in Shreveport,

one in New Orleans—the one in New Orleans is a little bit different from the one in Memphis, Tennessee and—but all of the southeast territory is under a Teamster contract with respect to line drivers and pick-up and delivery people.

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The Witness: And still it runs and as I say, about 75 percent of my work is executive work and I am on the executive committee of the company which is headed by the

president and chairman of the board and our executive vice-president and other officials of the company and it is true this executive committee that all of the operating problems and all of your policy matters of the company are decided. In that capacity, commencing in January of 1961, the company, having been faced with facts which were not good, namely that our cost, as far as safety was concerned, our cost on accidents, our cost with respect to maintaining equipment and all of the items which tie back directly into a strong safety program were far from good. When these are not good, it means that they are costing the company money; we are either not making them money or we are not making as much money as we should.

Q. Well, would you tell the Examiner what type of safety program the company had in January of 1961?

A. Up until January of 1960 and '61, the entire safety program of Red Ball had been, what I like to refer to as under local autonomy. We had left it up to the individual terminal managers to see to it that the safety program was carried out. You had complete local autonomy, for example, the terminal manager in Houston was charged with a safety program; the one at Dallas was charged with a safety program and so on and that had been the policy of the company for many many years but we concluded in January, 1961, that one of two things had to be done; that our terminal

manager had to be a one single thought, a one single action or else, we had to make another change and come at it

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another way and after the matter was discussed back and forth by the executive committee and was discussed in several board meetings in March of 1961, we decided that our safety program was not under the proper supervision and control and we decided to hire a safety director for the first time, so far as I know, in the history of the company and we did hire a safety director.

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Q. Will you tell the Examiner the instructions that were given to John Barr when he was employed by the Company? A. Yes, sir, Mr. Barr came to us after we had naturally, investigated his past and background and everything and we were thoroughly acquainted with the fact that Mr. Barr had been a former member of the Texas Highway Patrol and had been engaged in safety work for other truck lines. He came to work for us direct from East Texas—Southern Plaza, perhaps—

Mr. Richards: None of this is in response, Mr. Examiner, to the question.

The Witness: Knowing Mr. Barr's background we gave him the instructions to put into effect what he would decide upon was a proper safety program for the employees of our company so as to cut down accidents and to improve the caliber of driving and the caliber of drivers. He's given specific instructions to put into effect a strict program of screening applicants for driving positions; he was given specific instructions to take whatever steps were necessary to stop these accidents that the company was having and to eliminate personnel that were at fault and causing these accidents.

Q. (By Mr. Schoolfield) Did they give him authority to

traverse the various terminals of the Red Ball system to implement this program. A. He was not only given that authority, he was given those instructions.

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Q. (By Mr. Schoolfield) Now, prior to the employment of Mr. Barr, did you have a man who traveled to coordinate this program? A. No, sir, we did not.

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Q. Were you present or did you have any contact with Mr. Odom in reference to this? A. Yes, sir, I did personally as did the other members of the executive committee, several of which I am sure will testify in this proceeding before it is over with.

Q. What was Mr. Odom told? A. Mr. Odom was told that those costs had to be cut and that they had to be brought in line with the budget and he was told that the first thing he had to do was to cut down on personnel so as to bring his maintenance cost within the budget.

Q. Do you know as a fact whether or not Mr. Odom did something or did cut his costs? A. I know as an absolute fact that he did something about it.

Q. Do you know as a fact then whether Mr. Odom instituted layoffs? A. He did commencing in April of 1962.

Mr. Avedon: I am going to object to this—

Trial Examiner: Just a moment. Repeat the question, please.

Q. (By Mr. Schoolfield) Do you know as a fact whether or not Mr. Odom instituted layoffs? A. He did.

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Q. (By Mr. Schoolfield) Do you know as a fact, Mr.

Mathews, whether or not layoffs were instituted in other shops in Dallas by Mr. Odom? A. They were.

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Q. (By Mr. Schoolfield) Fine, sir. Do you have knowledge of any particular flow or number of trailers in the shop prior to let's say early 1962 and what disposition was made of some of these trailers? A. Well, I know that in the period of time in which you speak we were in the process of trading in old trailers on the purchase of new equipment. I also know that we had already purchased some new trailers from Lufkin and there was a movement of trailers back and forth between Lufkin and our general shop because Lufkin had to make a modification on them at their

own cost to meet our specifications after they had been placed in operation.

Q. How long had some of these trailers been in operation before the modification was made? A. Oh, some of them had been in operation for several months.

Q. Was some of them out of warranty even? A. That is correct.

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Mr. Richards: Well, I would like to on voir dire if I may.

Mr. Schoolfield: I have no objection to voir dire.

Mr. Richards: What is the basis of your knowledge here?

The Witness: I personally checked the records to see the accounts payable and we have not paid Hobbs Trailer Company a dime in over three years for the maintenance of a trailer or for any other cause.

Mr. Richards: For any purpose?

The Witness: For any purpose.

Mr. Richards: And this Hobbs Trailers where?

The Witness: Hobbs Trailers right here in Dallas, Texas, where Mr. Clem said he saw us taking trailers to be repaired.

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Q. (By Mr. Schoolfield) Now, Mr. Mathews, I am going to hand you the personnel file of Mr. W. T. Willingham and I want to state for the record that this personnel file was furnished to the General Counsel and the charging party during the last session in the General Counsel's case in chief, however, since that time there has been additions to that file. Could you tell us what those additions are?

A. Yes, sir, I have in my hand, which you have delivered to me, the personnel file of William T. Willingham and the additions to that file since the time you inquired about, is a certified copy from the clerk of the District Court of Smith County, Texas in Cause No. 12,198, styled the State of Texas versus W. T. Willingham; the first certified copy being the verdict of the jury in assessing a penalty of 15 years confinement in the state penitentiary. The next certified copy, certified to by the District Court of Smith County, Texas, in the same suit is a certified copy of the sentence of the court and the next certified copy is a copy of the bill of indictment in the same cause against W. T. Willingham by the Grand Jury of Smith County, Texas, charging the

said W. T. Willingham with armed robbery and fraudulently and without consent of the other person involved of taking possession of \$50 and 2,000 cigarettes and the next is a certified copy from the chairman of the Board of Pardons of Parole of the State of Texas under date of September 25, 1962, certifying that according to the records of the Board of Pardons and Paroles that W. T. Willingham, whose state prison number was 82643 was, on the 19th day

of March, 1936, sentenced to a term of 15 years in the state penitentiary for the offense of robbery by assault and theft from Smith and Jefferson Counties, Texas; that he was subsequently paroled from the state penitentiary on June 24, '44 and was discharged and sentenced to the Texas Prison System on June 16, 1950 and there is no record of the subject since that date.

Mr. Avedon: May I see that, please?

Mr. Schoolfield: Yes.

Q. (By Mr. Schoolfield) Now, Mr. Mathews,—

Mr. Avedon: I would like to know why this is offered.

Mr. Schoolfield: I haven't offered it.

Mr. Avedon: I am sorry. I want to know why you are putting this on the record, then.

Mr. Schoolfield: I am going to offer it for impeachment purposes of Mr. Willingham's testimony. Willingham was asked if he had ever been convicted of a felony and the answer was no.

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Q. To what section or portion of this complaint or charge against this respondent is Respondent's 17 related to?

A. Respondent's Exhibit 17 relates to that portion of the charge against this respondent by J. D. Lewis, H. J. or H. D.—Lewis, whatever his name is.

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Q. Continue, please, sir. Does this tariff have relation to any deliveries or shipments out of Homer, Louisiana?

A. Yes, sir, and before I can explain it properly there are

other shipping documents which I need in connection with that shipment, namely, the bill of lading and the Red Ball freight bill, and then I will show you the relationship of R-17 to the matter.

Mr. Schoolfield: R-18 is the bill of lading and R-19 for identification is the freight bill.

(The documents above referred to were marked Respondent's Exhibits Nos. 18 and 19 for identification.)

Q. (By Mr. Schoolfield) Mr. Witness, I will hand you Respondent's Exhibit 18 and 19 for identification and ask you to tell us what they are, please, sir. A. The instrument marked for identification as Exhibit R-18 is the bill of lading, shipper's order, 19869, dated March 11, 1962, issued by the Ludlow Corporation at Homer, Louisiana, showing Red Ball Motor Freight, Inc., as the originating carrier on a shipment consisting of 33 rolls of paper, wrapping, NOIBN, which means not otherwise indexed by name, weight 39,364 pounds, going to the West Virginia Pulp & Paper Company at 4501 Gustine Avenue, St. Louis, Missouri, routed Red Ball, in care of Strickland.

That bill of lading was issued by Ludlow Corporation and is signed for on behalf of Red Ball by one H. J. Lewis.

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Q. (By Mr. Schoolfield) All right, sir. Now, will you take in your hand Respondent's Exhibits 18 and 19 and show the relationship with Respondent's 17? A. Yes, sir. Referring back to Respondent's Exhibit 18 which is the bill of lading issued by Ludlow Corporation, that bill of lading calls for 33 rolls of paper, wrapping, NOIBN, weighing 39,364 at a rate of 75 cents per hundred, to be prepaid.

Exhibit R-19, which is Red Ball's delivery receipt refers to that bill of lading by number and calls for the same 33 rolls of wrapping paper, NOIBN, same weight and the rate is 75 cents per hundred, freight charges in the amount of

\$296.23.

Now, by referring to the instrument marked for identification as R-17, which is Supplement 149 to Tariff 85-D,

MF-ICC-346, effective February 17, 1962, which was a tariff under which this shipment moved, you will find that this commodity at this weight and in this type of movement was subject to this tariff provision and that that rate was only applicable when loaded by the shipper and unloaded by the consignee.

In other words, under this tariff the carrier could not—could do nothing more than spot the equipment and pull it away.

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DIRECT EXAMINATION

Q. (By Mr. Schoolfield) Would you give your name and address for the record, please? A. Ted D. Lane, Amarillo, Texas.

Q. By whom are you employed, Mr. Lane? A. Red Ball Motor Freight, Inc.

Q. Where are you stationed right now? A. In Amarillo, Texas.

Q. What is your position with the Company? A. Terminal Manager at Amarillo, Texas.

Q. When did you go to Amarillo? A. August 15th of this year.

Q. 1962? A. Yes, sir.

Q. Where were you prior to that? A. In Dallas, Texas.

Q. What was your position at that time? A. Terminal Manager.

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Q. All right.

Now did you have a conversation with Limbaugh at that time? A. No, sir. He came in, as I recall it, filled out his accident reports, and I was not at the terminal or was not available. And he went back out on his route.

Q. Then what did you do in reference to the accident?

A. In checking into it I wanted to talk to Limbaugh. And I went out, pulled the man's time card, in order to be sure and see him about it.

Q. Did you have the accident report at that time? A. I did have, yes, sir.

Q. All right.

Did you have a talk with Limbaugh that night? A. I did. The facts were a little vague and I was concerned about a possible injury to this fellow, and I discussed it with Limbaugh briefly.

Q. Why did you pull Limbaugh's card? A. Well, in order to be sure to contact him that evening without him getting away before I was able to see him.

Q. All right.

Did you see him that evening? A. I did.

Q. What did you say to him? What did he say to you? Do you remember? A. I explained to him that there was a possibility that this individual could allege an injury and that we needed time to investigate the matter.

I told him that under the circumstances he was suspended.

Q. What did he say to you? A. He asked how long the

suspension would be. I told him that I couldn't tell him exactly, how long it would be, that we would have to make an investigation of it, but to come down the next morning.

Q. All right, sir.

Did he say anything else? A. Well, he indicated that he would like to go to work for another carrier here in Dallas. And I told him that would be impossible under the Company's policy. And he showed concern about the suspension. He indicated—

Trial Examiner: While he was in suspension he wanted to work somewhere else?

The Witness: That is true, yes, sir. He was concerned about his earnings, apparently, and the fact that he had to meet bills. And I told him to come down the next day and we'd get into the matter.

Q. (By Mr. Schoolfield) All right.

Did you see him the next day or was there anything else to that conversation? A. Not that I recall.

Q. Did you see him the next day? A. Yes, sir, I did.

Q. Do you remember what time it was, approximately?

A. It was approximately 10:00 o'clock.

Q. All right, sir.

Do you recall what he said to you and you said to him the next day? A. I began by going through the facts of the accident at hand with him, and bringing out the seriousness of the situation, as I saw it, the possibility of a personal injury.

I also went through his previous accident record with him bringing out the fact that he had had backing accidents prior to this one. And I advised him that it was a chargeable accident.

Q. What did he say to this? A. At this point he said, "Well, they're after me over at the other office, aren't they?"

And I said, "I don't know what you are referring to."

He said, "Yes, Ernie Fisk is after me."

I said, "Limbaugh, I am not familiar with that. I am discussing this accident with you and that is all I am concerned with."

He said, "I think I will just resign."

Q. What did you say to that? A. I said then that, "If I felt that way I would resign, too." And I typed up a letter of resignation that he signed.

Q. You say you typed it up right there in the room with him? A. As I recall, it was typed right there, yes, sir.

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Q. Do you recall a time with Mr. Ernie Fisk on the parking lot in reference to Mr. Shamblin? A. I do, yes, sir.

Q. Can you tell us the circumstances on that, if you recall, sir? A. Mr. Fisk and I were on the Dallas dock. And we noticed a group of employees on the parking lot that looked suspicious. We didn't know what the cause was. We decided to investigate and we walked across the lot and onto the parking lot to investigate.

Mr. Avedon: Can you establish when this was, please?

Q. (By Mr. Schoolfield) Do you remember any particular

time? A. Sometime in March, as I recall. Possibly the middle or latter part of March.

Q. 1962? A. 1962, right.

Q. All right.

Go on. Do you remember what happened after you got on the lot or what you did when you got there? A. I believe Mr. Fisk approached Joe and asked him what was going on. Joe replied that they were discussing the tires on his pickup truck.

Q. That is Joe Shamblin? A. Joe Shamblin, yes.

Q. All right, sir. A. At that Mr. Fisk said, "You can't let it alone, can you, Joe?"

Trial Examiner: I am sorry. He said what?

The Witness: "You can't let it alone."

Q. (By Mr. Schoolfield) Can you remember what Joe said to that? A. Joe said, "I don't know what you are talking about." And Mr. Fisk indicated that he was talking about continued talk about labor relations among the employees. And Joe remarked that just because the election had been lost, that he wasn't going to take the stand that Mr. Nixon took in the presidential elections of 1960, that he lost and

he had to give up. And there was other verbal exchanges there that I can't recall all of them.

Q. All right, sir.

What happened then? Do you remember? Where did you go? A. We walked up and onto the dock.

Q. All right, sir.

Was Mr. Shamblin there at the time? A. Yes, sir, he was.

Q. Did he make any statements then, or did you make any statements to him? A. He indicated the Company ran its business similar to the way Cuba was being run, and made some snide remarks, lowering remarks.

Mr. Avedon: Objection to that.

Q. (By Mr. Schoolfield) Can you remember what he said? A. I don't recall what it was. He was talking to Mr. Fisk. There was some exchange of statements there. I don't recall everything he said.

Q. Could you recall what Mr. Fisk said? Did Mr. Fisk mention resignation? A. He invited Joe to resign if he was not satisfied with the Company, the way it was being operated, the present working conditions. Joe indicated he didn't want to resign. He was not satisfied with the working conditions and shortly after that, why that was the end of

the conversation between the two.

Q. Had you ever heard Mr. Shamblin mention anything about Cuba before? A. Yes, sir, at one other occasion.

Q. When was that? A. The first time that I saw Joe, shortly after arriving at Dallas, late February or early March. In that period he had had some operation and was in the process of coming back to work. I was in Mr. Jewell Meek's office at the time.

Joe came in with a physical examination in his hand. Mr. Meek advised him it would be necessary to have a second doctor examine him in order to be sure that he was

physically able to come back. Apparently Mr. Shamblin didn't like the remark. He said, "You people run your business just like Castro runs Cuba."

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Q. Did you have a conversation with Mr. Shamblin with reference to a backing accident? A. I did, yes, sir.

Q. About when was that, do you recall? A. Well, it was in April of this year.

Q. All right.

Can you tell us about that? A. Mr. Shamblin had been sent to Sunshine Biscuit Company by a warehouse to pick up a helper to pick up a load of bakery goods. I am not sure about their destination. At any rate he was to pick them up.

He went out and in the process of backing up into the shipper's dock, a door on the trailer was damaged, three hinges broken, as I recall it. We had Mr. Shamblin in.

Q. When you say "we", who do you mean? A. I did, I had Mr. Shamblin in.

Q. What was the conversation? A. Made reports on this.

Q. All right, sir.

What was the conversation at that time? A. He made the reports and I discussed it briefly with him and explained to him that I would have to suspend him until the next day in order that we could investigate the thing and visit the scene of the accident and be sure we were on sound ground.

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I invited him down at 8:00 a.m. the next morning. He said, "How about 7:00 a.m.?"

I replied, "NO, 8:00 a.m. is early enough."

He said, "That is too early for you big shots, huh?"

At that I advised him if he wanted to come early, we'd come at 5:00 a.m. the next morning. He agreed and that was the end of that interview.

Q. Did you all come at 5:00 a.m. the next morning?
A. Yes, sir, we did.

Q. Did you all meet at 5:00 a.m.? A. Yes, sir, I was there at 5:00. As I recall things, Joe was a little bit late.

Q. Did you have a conversation? A. We did have.

Q. What was it in reference to, this conversation? A. Well, in the beginning I asked him why he was late and he said that he wasn't late. At that I replied that I didn't expect anything better from him. And with that we went into the business at hand with regard to the accident. We discussed the accident.

I advised him it was a chargeable accident and that he had failed to take proper precautions depending upon the conditions to protect our equipment from damage.

I discussed his attitude towards his job, towards his supervisors and other Company officials. We discussed this

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at length. I felt that Mr. Shamblin's attitude was affecting his work and that his mind was elsewhere.

Q. Did you tell him this? A. I did.

Q. All right, sir.

Anything else that you recall in that conversation? A. I did remark to him that I had heard that he had made remarks during the recent election, that he was ashamed of Mr. English and that—

Trial Examiner: Of whom?

The Witness: Mr. English.

Q. (By Mr. Schoolfield) Mr. English.

Trial Examiner: Who does the record show Mr. English is?

Mr. Schoolfield: He is the President of the Red Ball System.

Voice: And Chairman of the Board.

Mr. Schoolfield: And Chairman of the Board.

The Witness: I cited this as being consistent with his attitude and asked him what, why he was ashamed of him.

And he replied that he was for a 30 hour week and that Mr. English had let all the employees down by engaging with another Union. At which time I tried to get away from the subject.

I advised him at that time that we weren't satisfied with

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his attitude. We felt like it was affecting his job, affecting his performance, and that we would have to have an improvement in that.

I warned him that should he be charged with another backing accident that he'd face disciplinary action.

And we confirmed this entire interview in writing.

Q. All right, sir.

Now did you have a conversation with Mr. Shamblin later on in reference to Westinghouse freight?

Trial Examiner: Well, let me ask first then, did he resume work? Is that after—

The Witness: He did resume work after.

Trial Examiner: —suspension was lifted?

The Witness: Yes, sir, it was. He resumed work.

Q. (By Mr. Schoolfield) Can you explain these suspensions, please, sir?

First, is there not a guaranteed work week under the U.T. contract? A. Yes, sir, there is.

Q. What is that work week, do you know? A. Forty-three hours.

Q. Does a suspension affect the guaranteed work week?

A. It doesn't affect it in that we reduce it. He is paid his forty-three hours, suspension or no.

Q. I see. All right.

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Is that true in every case? A. Yes, sir, it is.

Q. All right.

Now tell us about the Westinghouse instance, if you remember it, please. A. We received information through

our procedure, OS and D procedure, that Mr. Shamblin had left a shipment of freight at Westinghouse after he had signed in the shipper's bill of lading and acknowledged by doing so that he had received the freight.

Q. All right. A. We called Mr. Shamblin in for an interview about this subject.

Q. All right.

What was said at that interview, if you recall? A. I explained to him what had happened, that he had signed the bill of lading and had in fact not picked up the freight. And he acknowledged he had.

Again we discussed his attitude. I still felt at that time that other things on Mr. Shamblin's mind was affecting his performance, and that was a good example. And I brought it up.

We discussed his attitude the second time and I advised him that should he be caught leaving freight that he signed for and failed to check it in the future, that he would face

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discharge.

At that he got up to leave the room and said, "You won't fire me."

Q. He turned to you and said that? A. Yes, sir.

And I told him at that point, "Just do it one more time and we will see."

This interview was confirmed in writing.

Q. Did any further discrepancy on Mr. Shamblin's part come to your attention after that? A. That same day, yes, sir.

Q. What was that? A. Well, about two hours, possibly three hours after I had had this interview with Joe, why we learned that actually in Port Arthur, Texas—maybe it was Nacogdoches, one or the other, anyway, someone called in tracing a shipment to our Customer Service Department.

We found it necessary to make a special run to get the freight in an attempt to get it out of town and get it to this individual that day.

After this happened, why I discovered it and asked Mr. Shamblin to come in a second time that day.

Q. Did you contact him prior to that? A. Yes, sir, I called Wayne Sledge.

Q. How do you spell that? A. S-l-e-d-ge.

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Q. Who is Wayne Sledge? A. Who is a U.T.E. Councilman on the dock, or Committeeman.

Q. What did you say to Mr. Sledge? A. I outlined the difficulty that we were having with Mr. Shamblin. And I outlined our conversation that morning with regard to picking up freight. And I told Wayne that I had decided that we could not go any further and that the man would be discharged and asked if he had objections.

Trial Examiner: Would be discharged?

The Witness: That day.

Q. (By Mr. Schoolfield) All right, sir.

What did he say to you? A. He said under the circumstances, "I don't see that you can do anything else."

With that we called him in.

Q. Called in Mr. Shamblin? A. Yes, sir.

Q. What did you say to him when you called him in? A. We went back over the interviews we had that morning with him and I advised him that under the conditions of his failure to heed our warnings with regard to his attitude and his performance, that we were discharging him. And with that I handed him his final check and asked him to leave.

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Q. Now had Mr. Shamblin asked for this job or how did he get this route job? A. He had bid on the job early in April. We put the jobs up for bid and he bid on the job. He was the senior man and we assigned him to it because of his request.

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ees, why we ask him if it wouldn't be better for him to leave and seek other employment.

Q. Why do you take this attitude, Mr. Lane? A. I feel like it is best for the employee as an individual and certainly best for the Company.

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Trial Examiner: Why would Mr. Shamblin sometimes pull forty foot equipment on his route?

The Witness: Well, on his particular run at the time he was picking up at Westinghouse Electric, this was an account that we had been soliciting for more business, and they had given us more business.

At White's Auto Stores he had stops that many times

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would fill forty foot trailers. Operationally we felt it cheaper for us to send him out with a forty foot trailer rather than a smaller unit that would necessitate bringing it back in to get another one later in the day, thereby wasting some valuable man hours at that particular time.

Q. (By Mr. Schoolfield) Have you done that with other employees? A. We have, yes, sir.

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CROSS EXAMINATION

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Q. Now with respect to suspensions, when are drivers suspended after accidents? A. Beg pardon?

Q. Whenever there is an accident involving damage to equipment, you suspend the driver? A. If an investigation has not been made of the thing at the time, a suspension

is made until we have an opportunity to investigate the thing, yes, sir.

Q. How long will the suspension last? A. Normally not over 24 hours.

Q. Do you ever suspend people for periods of time more than 24 hours? A. Only through disciplinary action.

Q. All right.

If a man was suspended for 30 days, let's say, would you pay his guaranteed wage during that suspension? A. If he was suspended or laid off as a result, or as disciplinary action, he would not be, no, sir.

Q. Would not be paid? A. No, sir.

Q. Now you told Mr. Limbaugh when he came in that you were concerned about injuries to the boy. Isn't that correct? A. I told him that I was concerned with regard to the possibility of an injury.

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Q. Who decided to suspend Mr. Limbaugh? A. I did.

Q. Was the decision made in consultation with anyone else? A. What do you mean?

Q. Did you consult anyone else before you decided to suspend Mr. Limbaugh? A. No, sir, we were under instructions in that regard, general instructions.

Q. What do you mean by that? A. Well, we had been instructed by the Safety Department that anytime we did not have all the facts at hand, or did not have an opportunity to investigate an accident at the scene, that suspension should be made until the facts were gathered.

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Q. You then, after knowing what had happened after the accident and finding out Mr. Limbaugh's version, you told him he would then be suspended, right? A. I did, yes, sir.

Q. All right.

Did you state for how long he would be suspended?

A. I did not.

Q. Did he ask you how long he would be suspended?

A. He did.

Q. What did you tell him? A. I told him I couldn't tell him.

Q. Did you tell him who could tell him? A. No, I did not.

Q. Did you tell him why you couldn't tell him? A. I did. I told him I didn't know how long it would take for us to complete our investigation. I asked him to come down the next morning.

Q. Did you tell him by then you would have investigated? A. I did not.

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Q. Mr. Limbaugh then asked you and told you he had bills and he would have to know how long the suspension would last. Is that correct? A. Yes, sir, that's correct.

Q. And you made what reply? What was your response to that? A. I told him it was just impossible at that time for me to tell him definitely just how long it would be.

Q. Did you ever give Mr. Limbaugh a length of time in which he could expect the suspension to be lifted? A. I did not, no, sir.

Q. Mr. Limbaugh had been working for the Company a few years, hadn't he? A. As I recall he had been, yes, sir.

Q. Were you aware that he had a number of Safety Awards in this period? A. I knew that he had gone through possibly two years of his employment without a chargeable accident, and had been awarded Safety Awards on those two occasions.

Q. Did you mention the Safety Awards when you were telling Mr. Limbaugh you were going to suspend him. A. I did not.

Q. I take it there was two separate conve——

separate days with respect to this suspension. Is that correct? A. With respect to the suspension?

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Q. Right. A. No. On Monday after the call, we talked to him that afternoon and suspended him. The next day he came in and we interviewed him. Why as far as the suspension was concerned, I didn't tell him anything about the suspension. I didn't have an opportunity to.

My mind had been made up to write the fellow a warning letter and put him back on the job.

Q. Did you tell him that? A. I did not.

Q. Why didn't you tell him that? A. I didn't get that far along with him. As I was approaching that stage of it, why then he came up with this thing I certainly wasn't familiar with, that the people in the other office was after him because of some alleged Union activities he had been involved in, with which I was not familiar.

Q. Did he tell you he had been active in the Teamsters? A. He may have made a remark or led me to believe he was at that time, yes, sir.

Q. And when he said they had it in for him because of his Union activities— A. He thought that they did. And I explained to him that I was not familiar with that and that may con_____ the accident.

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Q. Did you tell him at this time that you intended to just give him a warning and permit him to return to work?

Mr. Mathews: Mr. Examiner, I want to object to that. He's answered it already once. He didn't have a chance to—

Trial Examiner: He said he did not have time.

Q. (By Mr. Avedon) Mr. Limbaugh stated he hated to lose his seniority? A. He did.

Q. When was this that he made that statement? A. Just before signing the letter.

Q. Now you stated that Mr. Limbaugh stated that he in-

tended, he would resign. In other words, he brought up the subject of resignation? A. He did, yes, sir.

Q. You did not suggest it to him? A. I did not, no, sir.

Q. And he said that he might as well just resign? A. He did.

Q. Even though he also told you he didn't want to lose his seniority? A. Well, he told me that after he had indicated he wanted to resign. And when he indicated he wanted to resign, I dropped the thing. Certainly he had his mind made up on the situation and certainly I was not going to change it for him.

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Q. Did you have a check in Mr. Limbaugh's file? A. Not that I recall.

Q. Not that you recall? You don't remember having his check in the file? A. I had his time card, I had his complete file which had all the pertinent documents since he came to work. But I did not have a check.

Q. When you typed up this letter of resignation, you asked Limbaugh if that was what he wanted to do? A. That's correct.

Q. And he said yes? A. He hesitated. He said, "I hate to lose my seniority but I don't see any other way."

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Q. (By Mr. Avedon) Now you stated sometime in March you were with Mr. Fisk on the Dallas dock when you saw Mr. Shamblin and some other people on the parking lot. A. That is correct.

Q. Is it unusual to see a number of drivers on the parking lot talking? A. It is not unusual to see employees on the parking lot. It is unusual to see them in a huddle out there.

Q. How many of them were there? A. I didn't count them. I don't know. But there were several.

Q. Several. In other words, what do you mean by seeing them talking as against a huddle? Were they actually in a football huddle? A. No, they were congregated together.

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Q. What caused you to go down there when you saw these people talking? A. Well, as I said, I was suspicious. Frankly, I didn't know what was going on. I thought they might be having a fight out there or something. Certainly we didn't want that situation. That is the reason we went out to investigate the thing.

Q. Then you proceeded to ask Joe what was going on. Is that right? A. I did not engage him in conversation, no.

Q. I am sorry. Mr. Fisk proceeded to ask Joe what was going on? A. Correct.

Q. Do you know why he asked Joe what was going on? A. I don't have any idea.

Q. Can you tell me how many other people were there? A. I am afraid I couldn't give you a number. I would estimate.

Q. Five, ten, thirty? A. Probably eight to ten people.

Q. Eight to ten people.

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Q. When Mr. Fisk said, continued to talk about labor relations, I believe you stated it that way, didn't Mr. Fisk say, "You are continuing your actions for the Teamsters"? A. I don't recall a remark like that.

Q. You don't? A. No, sir.

Q. And you don't recall the remark that was made? A. No, sir, I don't recall him specifically bringing the Teamsters up about it.

Q. Can you remember what was said with respect to that? A. Mr. Fisk, as I recall, said, "Joe, you just can't leave it

alone, can you?". And he said, "What are you talking about?". And he said, "You just can't keep from congregating these people and stirring this thing up even after we have already reached a decision on it." And that is how it began.

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Q. How many O S and D reports a day are issued by the Dallas terminal? A. Oh, I would estimate between 80 and 100, maybe in excess of that sometimes.

Q. I see. And how many short reports a day would be issued by the Dallas terminal? A. Well, of course it fluctuates.

Q. I realize that. On an average? A. I would imagine both in and out there would be probably 40 or 50 of them.

Q. These would be cases where the driver failed to pick up freight basically? A. No, not necessarily. This would also include cases where we delivered short to local concerns here in Dallas.

Q. I see. Where, in other words, you would pick up a full shipment and when you delivered it, you didn't deliver a full shipment? A. Well, just say a shipment originates in Amarillo, Texas, consigned to Dallas, and it comes in here and we deliver to the Dallas consignee short.

Q. Now you learned of the White shipment when? A.

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Oh, it was approximately two to three hours after I had discussed the Westinghouse matter.

Q. Do you know what date it was? A. Same day.

Q. What day would that be? A. I believe you said May 1st.

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Q. Whenever you terminate a man who is represented by the U.T.E., do you contact the U.T.E. representative before

you do that? A. Yes, sir, that is required under the terms of the contract and it is required by Company supervision. We always do.

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Q. Are you contending that Shamblin bid specifically for this run involving Westinghouse, White and many of these other jobs involving— A. I don't say that Joe bid on a run to go out to White's, no, sir. We don't put up our routes for bid in that manner. We put them up, as for example, the job he came off of was a six-wheel delivery. He came off of that onto a bobtail pick up and delivery, and bid on that job.

Q. The only thing, Joe didn't use a bobtail, did he? A. No, he didn't use a bobtail for the route.

Q. He was given a forty foot trailer to make city pick up and deliveries with?

Mr. Mathews: I am going to object to that as being a mis-statement. Mr. Lane said forty foot and others on occasion.

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Mr. Avedon: I don't think he said anything about "other" on Shamblin.

The Witness: I did.

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The Witness: Well, he was on occasion, yes, sir, he was.

Q. (By Mr. Avedon) And it is more difficult pulling a forty foot trailer in city traffic than a bobtail, isn't it?

A. I would say it was, yes.

Q. Prior to your discharge of Shamblin, have you discharged any other people working the city pick up run after coming from, was it Shreveport to Dallas? A. I don't recall another instance on it, no, sir. I don't offhand.

Q. Can you tell me how many people you have discharged

while at the Dallas terminal for failing to make the proper pick ups and deliveries? A. I believe Joe was the only one

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that was actually discharged as a result of it. Others have been interviewed and warned about it.

Q. Other drivers on occasion have made mistakes. Is that correct? A. Yes.

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Q. Have other drivers on occasion made more than one mistake and been given more than one O S and D report, or short report?

Mr. Mathews: I will stipulate with Counsel that they have, and Shamblin's own personnel file which was delivered to them at the other Hearing reflects that Shamblin had done it on at least six occasions and had had warning letters.

Mr. Avedon: I am not asking for a stipulation. I am asking a very simple question of the witness and prefer not to be interrupted.

The Witness: Would you repeat it again?

Q. (By Mr. Avedon) Did you ever learn of more than one short report made by other drivers? A. Not while here, no, sir.

Q. In other words, your testimony is that all of these reports, they had never been made by more than one driver having a deficiency as far as his picking up of goods? A. Not that we deducted, no, sir.

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Q. How many drivers do you have doing pick up work in Dallas? A. Well, at the time we had, I'd say approximately 70 to 75.

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Q. Do you recall testifying May 16, 1962, having your

deposition taken before a Notary Public? A. I recall that, sure do.

Q. Do you recall the following questions and answers being—

Trial Examiner: Where was this supposed to have been?

Mr. Avedon: This was a State Court proceeding for an injunction brought by Red Ball Motor Freight against Joe Shamblin. It was a deposition that was taken in connection with that proceeding.

Mr. Mathews: In a case which was still proceeding, Mr.

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Examiner, and Mr. Shamblin is under an injunction which he has never appealed.

Mr. Schoolfield: Are you going to read to him?

Mr. Avedon: Yes.

Q. (By Mr. Avedon) Do you recall the following questions, "Now is there any particular reason—" this is referring to the Westinghouse shipment now—"any particular reason why you took five or six days to decide that this was one of those kind of cases in which you wanted to interview the driver?" A. "As I explained, we, we don't, or I don't look at each one of them individually. It may take me two or three days to get around. Maybe I would look at every one of them, but I'd check one day, and maybe I will check the next day."

Q. "Uh-huh." A. "In this particular instance it came to my attention on May 2."

Q. "Do I understand those O S and D reports have been on your desk four or five days and you haven't—" A. "There had not been an O S and D report made."

Q. "There had not been one made?" A. "No, sir."

Do you recall your testimony to that effect? A. Well, I don't think—go back over that again, please, sir, if you will.

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Q. I will show it to you. It's probably easier. A. All right. Well, it's possible that this could have been before the

Form 10's that were issued. I don't recall. I think that an O S and D had been issued. I may be in error there, but as I recall, there had been.

Q. Did you so testify? A. Yes, I did.

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Q. Did you institute any changes in personnel practices with respect to cause for discharge when you became terminal manager at Dallas? A. Well, we began tightening up a little bit, yes, sir.

Q. Did you institute any fixed changes that you can now describe to us? A. Not that I can recall offhand.

Q. What do you mean by tightening up? A. Well, insofar as accidents were concerned, why the ratio had gone up. We felt that it was necessary to tighten up by giving disciplinary action when this warranted it, by counsel with the people about the accidents.

In freight handling generally, we were after added, or increased efficiency.

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JAMES W. SANDERS

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

Direct examination

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Q. What position do you hold with Red Ball Motor Freight, Inc.? A. Shop foreman.

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Q. Mr. Sanders, were you employed in your position as shop foreman at the Shreveport, Louisiana shop on about March 11, 1962? A. Yes, sir, I was.

Q. Do you recall receiving a telephone call on or about that date from a line driver of Red Ball Motor Freight? A. Yes, sir.

Q. Did you receive the call in daylight hours, or during night hours? A. No, sir, I was at home.

Q. Approximately what time of the day or night? A. Eleven p.m.

Q. Do you recall who the telephone call was from, Mr. Sanders? A. Yes, sir, the name was Cathey.

Q. Did he make any report to you in that telephone conversation? A. Yes, sir. He told me he was driving down the highway and he was nearing El Dorado, Arkansas, approximately ten miles from El Dorado, and the rear wheels came off his tractor, the drive wheels on the right side, and ran into a car that was parked on a shoulder.

And I asked him where he was, and he was in El Dorado. And I asked him if there was any personal injuries, and he said no. I asked him if he had contacted our terminal man-

ager in El Dorado and he said he was handling the details on it.

But he requested that I send a mechanic up there with some more wheel lugs to put these wheels back on his truck. And from the description it was considerable damage to it and I just told him we would bring him another tractor up there on the float, and just bring that one back to Shreveport.

Q. Mr. Sanders, I was looking here at another date in connection with another witness. I used the date May 11th. I mean March 11th. Could it have been on April 1, 1962, that you received this call? A. Well, I—I can't remember

the exact date. It's been too long, but it could have been that date.

Q. Well, I will show you what is in evidence as Exhibit, General Counsel's Exhibit No. 37, and let you look at it. And after you have looked at it, would you tell me whether or not that is the accident and incident to which you refer?

A. Yes, sir.

Q. And does that Exhibit show the date of the accident to be April 1? A. April 1, yes, sir.

Q. Mr. Sanders, after you received that call, did you personally go to the scene of the accident, or just what did you do? A. No, sir, I contacted Mr. Rex Murphy and gave him

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the approximate location and instructed him to take another tractor and load it on the lowboy float and haul it to the scene, and load the other tractor, and to bring it back to the shop.

Q. The following day did you have occasion to see the tractor which Mr. Cathey had the accident with? A. Yes, sir. Sometime in the—about the middle of the day Mr. Murphy came in with the whole rig, with the two tires and two wheels loaded on top of the trailer. And I examined these wheels and noted their condition.

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Q. Now Mr. Sanders, by referring to Exhibit 34, will you tell the Trial Examiner what conditions you found the two tires and rims in that you inspected on or about April 2nd,

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that came off of the Cathey tractor, having specific reference to the holes through which the lug bolts go. A. These holes were elongated in a radial direction approximately twice the original diameter.

Q. And was that true of all of the holes on the rims? A. Yes, sir, ten holes in each wheel.

Q. And was it true of all twenty holes? A. Yes, sir.

Q. In other words, it was true with respect to the holes on each of the rear, right rear dual tires, correct? A. Yes, sir.

Q. Now were those holes bored out by some machine or just how did they look? A. They were just wallered out from being loose on the studs.

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Q. Have you ever seen any holes in a rim, that had been elongated like this before? A. Not to this extent.

Q. Have you ever seen any that had been elongated to any extent? A. I have seen some that were larger than normal, but they weren't what you'd call egg-shaped.

Q. Based upon your own personal knowledge and experience, do you know of any causes for that? A. It is a matter of, the nuts just being loose, lug nuts.

Q. And the tire working on the bolts, is that correct? A. Yes, sir.

Q. You know that from personal experience as a shop foreman and mechanic. Is that right? A. Yes.

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Q. Now did you personally inspect these tires on the float when it came in to Shreveport? A. Yes.

Q. And do you know of your own personal knowledge that they were in that condition? A. Yes, sir.

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Q. Now on which one of the wheels, the inner wheel or the other wheel, was the nut, the inner-nut and the broken part of the stud? A. These pieces were all in the outside drive wheel.

Q. Where they any nuts, bolts or other objects in the elongated holes in the inner wheel? A. No, sir.

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Q. Mr. Sanders, is there any way for a person to inspect tractor equipment and ascertain whether the lug bolts are loose, or not, by any means other than by physical use of his hands? A. Yes, sir, he can tell visually whether or not they have been loose, if they are more than just the slightest bit loose, you can tell visually.

Q. Well, you have shown me how that is done. Now see if you can describe it into this record, how you can tell visually. A. Well, the circumference of the bolt hole circle, anywhere there is any friction taking place or wearing between this nut and the hole in that wheel, there will be a

residue of powder will be thrown off from there.

Q. Is that kindly in a spider web fashion? A. Correct. In a fashion out like a star from the—the centrifugal force will throw that out and there will be evidence that these are loose.

Q. Do you ever have any line drivers come by your shop with equipment to have the lugs tightened on it? A. Yes, sir, four, five times a week. Sometimes more. I have had as high as three and four a night.

Q. Would the weight of the truck and the weight of the tires and the rim and everything normally prevent a man from being able to ascertain that it was loose through use of his hands? A. It will vary with how many is loose. Most drivers report that they can turn them with their hands, possibly one, and the others, all that we can tighten them up to a certain extent, they may not be as loose as the one they found loose. But all the studs can be tightened, usually.

Q. Have you had drivers report loose lugs to you that were not movable by hand? A. Oh, yes, sir. They, drivers reported to me that the wheels looks like it's loose.

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Q. Including the time you have been at Shreveport as shop foreman, and the time you worked at the Red Ball shop in Dallas, how long have you been a mechanic and a shop foreman? A. I have been a mechanic for 19 years.

Q. And how long have you worked for Red Ball? A. Ten years.

Q. Based upon your personal experience, and from your observation of these wheels that were on the Cathey tractor which you inspected in Shreveport on or about April 2, what is your opinion as to whether or not the lugs on that righthand drive wheel of the Cathey tractor were in a tight, snug condition at the time that tractor left Shreveport? A.

Well, I would say that that tractor had been driven several hundred miles since it was easily discernable that some of these nuts were in loose condition.

Q. Would it be your testimony that they were not in a tight condition when they left Shreveport? A. Yes, sir, it would be.

Q. But how far is it from Shreveport to El Dorado, do you know? A. A hundred miles.

Q. I believe you said this accident was reported at about ten miles from El Dorado? A. Yes, sir.

Q. So it is your opinion as an expert that they were loose prior to leaving Shreveport. Is that correct? A. Yes, sir.

Q. Oh, yes, one other question unrelated to that. Mr. Sanders, did you have a layoff in the Shreveport shop in April of 1962? A. Yes, sir.

Q. How many men did you lay off? A. Four.

Q. From whom did you receive your instructions for the layoff? A. From the terminal manager and the general office.

Q. Here in Dallas? A. Requested we cut the shop force by four men.

Trial Examiner: When was this?

The Witness: It was in April.

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Q. Mr. Sanders, you stated that you had driven a truck and had previously stated your qualifications. Based upon your experience, what is your opinion as to whether or not a driver could have felt the vibrations or the wiggle in a tractor that had lugs in a loose condition, that you are contending these were in?

Mr. Avedon: Objection, to that.

Mr. Richards: This is a presumption on an assumption of a state of facts that is not in evidence.

Mr. Mathews: I am asking his opinion.

Mr. Richards: Well, on a state of facts that is not established to be true.

Trial Examiner: He may answer.

The Witness: I feel like that a driver would be able to tell the difference as I have drivers report to me from time to time that they hear a popping noise in their wheels somewhere. Either they suspect generally that maybe something is wrong with the bearings and examination sometimes will disclose that these are loose.

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Cross Examination

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Q. In the period of time that you have worked for the company, are you aware of other incidents when wheels came off trucks or tractors? A. I have known of a wheel to break and come off. And I have known, as we talked about this spoke wheel type, to come off. But I have no

knowledge of this type of wheel just coming off. I can recall no incident where this has happened in the Shreveport area unless the wheel itself broke.

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Q. But nevertheless, at the time you saw the equipment, as I understand it, Respondent's 40 was still in place. Is that right? A. It was in the wheel.

Q. That's right. A portion of the stud had broken off, a portion of R-39 had broken off and was still contained in R-40? A. Yes.

Q. R-40 was still in the outside wheel. Is that correct? Of the tire? A. Yes.

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Q. All right.

Now on a completely assembled wheel ready to roll, the outside nut is screwed up against that rim at the beveled edge tight, is it not? A. It is.

Q. On the complete assembly, R-40, which is an inside nut, is screwed up tight with the beveled edge, tight against the inside wheel, is it not? A. That's right.

Q. Now when the stud shears as it did in this case, with the exception of the part that remained in the hub, it comes loose and by necessity stays in the outside wheel, doesn't it?

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A. Yes.

Q. And because of the breakage, you can slip it back and forth longitudinally, can't you? A. Yes.

Q. Now that wheel coming off and running down the highway wouldn't serve in any way to loosen this nut, would it, like you'd loosen it with a wrench, would it? A. No.

Q. (By Mr. Mathews) State your name, please, sir. A. Rex M. Murphy.

Q. Where do you live, Mr. Murphy? A. Shreveport, Louisiana.

Q. What company are you employed by? A. Red Ball Motor Freight, Inc.

Q. What job do you have with Red Ball, Mr. Murphy? A. Mechanic third class.

Q. In what shop? A. The Red Ball Motor Freight shop at Shreveport.

Q. Mr. Murphy, in the interest of time, were you in the room and did you hear the testimony of the witness, Sanders, who preceded you on the stand? A. Yes, sir.

Q. Are you the gentleman which Mr. Sanders directed to go to a point south of El Dorado on or about April 1, 1962, to replace a tractor? A. Yes.

Q. Did you go? A. Yes.

Q. About what time of night did you leave Shreveport, if you remember? A. It was approximately midnight.

Q. Did you take an extra tractor with you? A. Yes.

Q. How did you do that? A. By loading it on an empty float and hauling it up there with a winch truck.

Q. Who drove the winch truck? A. I did.

Q. Do you recall approximately how far it was from El Dorado that you found the truck with the broken—with the wheel run off? A. I would say approximately ten miles.

Q. When you arrived at the scene of the accident, was it still dark or was it getting daylight? A. It was just turning daylight, yes, sir. Turning.

Q. Was there anyone else at the scene of the accident when you arrived? A. No, sir, other than the driver.

Q. And do you know the driver's name? A. Yes, sir, his name was Cathey.

Q. Was there an automobile there when you arrived? A. No, sir.

Q. And only Mr. Cathey was present? A. Yes, sir.

Q. At the time you arrived at the scene of the accident, was there present in the immediate vicinity somewhere around the truck, the two dual tires that went on the right rear wheel of the truck? A. No, sir, there was only one

there.

Q. There was only one? A. Yes, sir.

Q. Did Cathey represent to you whether that was the one that hit the car, or not? A. Yes, sir, he told me that that one hit the car. And I asked him where the car was and he said, "It's already gone."

Q. And did you, through the use of your winch equipment, raise the disabled tractor onto the float and replace the usable tractor under the semi-trailer? A. Yes, sir.

Q. Mr. Murphy, did you ever find the other dual tire? A. Yes, sir, we found it after looking—I asked him where the one was that he had found, and he designated that it was on the left of the highway in the direction of which he was going. So we started back down the highway together.

Q. When you say back down, do you mean back towards Shreveport? A. Back from the direction he had come.

Q. Yes, sir. A. And we found the other wheel with the other broken parts intact down in the bar-ditch.

Q. How far back? A. Approximately, I would say from three-quarters to a mile.

Q. Back down the highway? A. Back from where the truck was. And he helped me to get it up on the shoulder of the highway where it could be easily loaded on my way back.

Q. Was there any brush or objects along the right-of-way? A. No, sir, no, sir. There was tall trees but not brush.

Q. Was there any—was the highway in good condition along there? A. Yes, sir, that particular part, it was.

Q. And is it your testimony that one of the wheels was found back up the highway from the direction which Mr. Cathey had come, approximately a mile? A. Yes.

Q. Was it laying in the bar-ditch? A. Yes, sir.

Q. Did you find the belt that fit into the sleeve? A. No, sir, I never seen it at all. And we hunted and went out as far as we thought permissible that it might go and I haven't seen it 'til yet.

Q. The wheel that you found back up the highway about a mile in the bar-ditch, was that the outside dual wheel or inside dual wheel? A. That was the outside.

Trial Examiner: The what?

The Witness: The outside.

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Q. (By Mr. Mathews) And is that the wheel that had the nuts and the sleeve and the studs in it? A. Yes.

Q. Now you heard the testimony of Mr. Sanders here regarding the condition of the holes in these wheels, did you not? A. Yes, sir.

Q. If I asked you the same questions, would your answers be the same as those given by Mr. Sanders, as to the condition of those wheels? A. Yes, sir, that is the way they looked to me when I first examined it.

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Cross Examination

Q. (By Mr. Avedon) Did this conversation that you had with Cathey when you went out to switch tractors with him, what was the total,—was this the whole conversation,

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you said? A. Yes. He merely made the statement, and I didn't carry it on for the simple fact that I was merely an employee like he was and I didn't feel like I had any—in

fact, I don't have any authority to tell a man whether he's going to be fired or not. In other words, that is just—my job merely was to get up there and take him good equipment and get him gone. That is my job.

Q. Did he say in any way that he hadn't checked his equipment? A. No, he didn't say whether he did or didn't. He said, "I think, I expect I will be fired for not checking my equipment."

Trial Examiner: He didn't state he had not?

The Witness: No, sir.

Q. (By Mr. Avedon) He just said he expected to be fired and the reason he would be fired was for not checking his equipment? A. Yes.

Q. He didn't say anything other than that? A. No, sir.

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Direct Examination.

Q. (By Mr. Schoolfield) Will you give your name and address for the record, please, sir? A. John W. Barr. My business address is 3177 Irving Boulevard, Dallas, Texas.

Q. By whom are you employed, Mr. Barr? A. By Red Ball Motor Freight, Inc.

Q. When did you come with the company? A. April 3, 1961.

Q. Fine. Who employed you? A. I was employed by Mr. Charles Ernest Fisk.

Q. And what were his duties with the company at the time? Do you know? A. He was Vice President of Operations.

Q. For what purpose were you employed? A. I was employed as Safety Director for the company.

Q. Did you have a conversation with Mr. Fisk at that time in relation to your duties? A. Yes, sir, I did.

Q. What was that, please? A. Mr. Fisk advised me that as Safety Director for the company I would promulgate a safety program for the company and see that the rules and regulations of the company were enforced.

Also promulgate a personnel selection program for the driver personnel and so on.

Q. Was there any particular types of employees over which you were to have this safety program, or for which you were to establish this safety program? A. Yes, sir. I was to establish the safety program for the entire system. I would personally take care of the safety program as far as the line drivers were concerned, assist the Terminal Manager as I had outlined it in our program.

Q. Assist the Terminal Manager in relation to what type of employees? A. In relation to city pickup and dock employees.

Q. Right.

Now did you have any discussion with Mr. Fisk at the time in reference to the necessity of a safety program? If so, what? A. Yes sir, I did.

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After being there a short period of time and compiling what few statistics that I could on the accident record of 1960—they had a pretty high frequency, and I was told by Mr. Fisk that their frequency had to be brought down and the cost of accidents reduced.

Q. What did you do prior to coming with Red Ball? A. Well, prior to coming to Red Ball Motor Freight, I was Assistant Director of Safety of East Texas Motor Freight.

Q. How long were you there? A. I was there seven months.

Q. Before that? A. Assistant Director of Safety for Southern Plaza Express.

Q. Before that what did you do? A. I was with the Texas Department of Public Safety for approximately eight years.

Q. Have you taken any special courses to prepare you for

safety work? A. Yes, sir. I took special courses at the Texas Department of Public Safety Academy in Austin, accident investigation, traffic laws, and so forth. I also completed a course at the University of Oklahoma in Advance Fleet Supervision. And just recently I have been certified by the National Committee on Certification Safety Director, due to the fact that I possessed the qualities needed for

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the certification.

Q. All right.

Now you say you worked for East Texas as Assistant Safety Director. Can you tell us whether or not East Texas had a union? A. Yes, sir, they did.

Q. Were the line drivers in this union? A. Yes, sir, they were.

Q. Were the city pickup and delivery drivers in this union? A. Yes, sir, they were.

Q. What union was that? A. It was the Teamsters Union.

Q. Is the same thing true for Southern Plaza? A. Yes, sir.

Q. As Safety Director did you work with the union contracts? A. Yes, sir, I did.

Q. Now when you came with Red Ball, you worked with and administered union contracts in performance of your duties? A. Yes, sir, I do.

Q. What contracts are those? A. Well, the Union of Transportation Employees, and the Teamster contract.

Q. That covers both city dock— A. Yes, sir.

Q. —and line drivers? A. That's correct.

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Q. Now when you were employed with Red Ball Motor Freight, what was the system at that time, or the Red Ball system at that time? A. At the time I was employed by Red Ball, the system extended from Denver, Colorado, on the north; Santa Fe, New Mexico on the west to El Paso; Eldorado and Shreveport on the east; Beaumont and Houston the south.

Q. All right, sir.

Did you mention Oklahoma City? A. No, I didn't mention Oklahoma City. And Oklahoma City.

Q. That is on the north, right? A. Yes, sir.

Q. Now when you first came to work for Red Ball, generally what did you first occupy yourself with doing? A. Well, first I occupied myself with becoming acquainted with the company policies, rules and regulations and getting acquainted with the method of operation of Red Ball Motor Freight.

There are no two motor freight lines that operate exactly alike. As a result I realized I had to become acquainted with some of their policies and procedures.

Q. Go ahead. A. That is what I did the first month or so that I was there.

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Q. Now did Red Ball at the time you came to work have some type of safety program? A. I understand that the safety program at that time was being handled by Mr. Fisk and Mr. Scruggs. And they weren't devoting full time to the safety program. It was on a hit and miss basis.

Q. In the course of your safety program, do you hold meetings with the employees? A. Yes, I do.

Q. What kind of meetings would you hold with them? A. I hold safety meetings with them in regards to safe driving practices. We show training film, if you want to call them training films. We explain the different hazards. We also talk about prevalent type accidents and so on down the line.

Q. Do you recall when you first got into your safety meetings as part of your safety program? A. I believe it was in the latter part of May that we held our first safety meeting at Red Ball Motor Freight.

Q. Would that be May of 1961? A. May of 1961.

Q. You said, "We." Who is "We?"—to hold the safety meeting? A. I called the safety meeting, and Mr. Dale Scruggs and Mr. Ken Morgan were present.

Q. Did Mr. Scruggs work pretty closely with you in the early stages of your program? A. He worked with me very closely in the early stages, yes, sir.

Q. Now is Mr. Scruggs still involved in safety work? A. No, he is not at the present time.

Q. What are Mr. Scruggs' duties? A. Mr. Scruggs is the Director of Transportation.

Q. What are Mr. Scruggs' duties, please? A. Well, Mr. Scruggs has charge of, we'll say control of the equipment from terminal to terminal, he is more or less the central dispatcher. But his title is Director of Transportation.

Q. In this type of operation Mr. Scruggs is close to safety work also? A. Yes, sir.

Q. He is in close contact with the line drivers? A. Yes, sir, very close contact with the line drivers.

Q. Now could you give us generally what you told—well, who was present in this first safety meeting in May of 1961? A. Well, there were a number of line drivers.

Q. I mean classifications, not individuals. A. They were line drivers.

Q. It was held for line drivers? A. It was held for line drivers, yes, sir.

Q. What did you tell them at this time? A. We discussed the company rules and regulations which had been published back in 1960. We reminded the men they had received these rules and regulations and those that hadn't received them were asked to speak up so they could get a copy of them. No one did speak up. It seemed that everyone did have them. We discussed them at length.

I also discussed the speed of the vehicles, and I told them that I had been given to understand, due to the fact they did not have a full-time Safety Director, that the company more or less had been lax in enforcement of its speed regulations according to some of the things that had come to

my attention. And that speeding would not be tolerated within the bounds of any city, town or community, would not be tolerated one mile.

Q. Now what is the speed limit in Texas? A. The speed limit in Texas is 45 miles an hour for trucks on the open road.

Q. What is the speed limit in Texas for cities and towns? A. To whatever it is posted.

Q. Posted speed? A. Posted speed, yes, sir.

Q. All right.

Now wherever the posted, suppose the posted speed is above the statutory speed? A. Well, if the posted speed is

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above the statutory speed, the statutory speed would prevail for trucks.

Q. That is the law of Texas? A. That's the law of Texas.

Mr. Avedon: Objection. The best evidence would be the statutes of Texas.

Trial Examiner: Well, he may tell us.

Mr. Avedon: In other words the objection is overruled?

Trial Examiner: Right.

Q. (By Mr. Schoolfield) Can you tell us the company policy in reference to open road speed limits, over-the-road speed limits, not cities and towns, just open road driving?

A. We have advocated, I have always advocated ever since I have been here, I have told the drivers at several meetings, not only the first meetin, that the company drivers will all abide by state and local regulations. And I have never told them that they could exceed 45 miles an hour, although it has been my policy, as well as you might say the company policy, due to the fact that I am part of the company, that I have given these man a five-mile an hour tolerance.

In other words, if a man drove up to 50 miles an hour, I'd not say anything. However, I never stated this to any

of the men and never will state this to any of the men, because I cannot, nor can anyone, tell a man that he can

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drive up to 50 miles an hour.

In other words, I can't tell a man that he can violate the law, and I don't ever intend to tell a man he can violate the law. However, I will give him a tolerance out on the open road.

Q. Now as Safety Director, is there any other reason why you wouldn't tell a man to go 50 miles an hour or tell him the company policy outright? A. Well, for the simple reason if I told him that I would tolerate 50 miles an hour, he would probably take 55. In other words, you give a man an inch, and he is going to take a mile.

Trial Examiner: Five miles.

The Witness: Five miles, yes, sir.

Q. (By Mr. Schoolfield) Now are any company schedules, have you had an opportunity to check company schedules as to time and distance? A. Yes, sir, I have. And just recently I made a trip into Denver on one of our schedules.

Q. Are any company schedules set up in such a fashion the man has to go at 45 miles an hour to arrive at destination on schedule? A. No, sir, they are not.

Q. Can you tell us in your experience any reason for a driver exceeding 45 miles an hour? A. There is no earthly

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reason why a driver should exceed 45 miles an hour on the runs that Red Ball Motor Freight has set up at the present time.

He has ample time to get in there with the schedule.

Q. All right, sir.

Now did you testify that in this meeting of May 1, you mentioned speed limits or speed in city limits? A. Yes, sir, I certainly did.

Q. All right, sir.

Now have you informed the men about company rules, for ignorance of company rules, or do you state anything like that in your meetings? A. I have stated at the first meeting that I held with these men that they, from time to time they would be notified of rules and regulations. They would be posted on the bulletin boards. They would be told at the company Safety Meetings. And if they weren't there, they were expected to know what the company rules and regulations were.

In other words it boiled down to this, that ignorance of the company rules and regulations was no excuse.

Q. Then you are stating you hold every line driver responsible for what is said in those safety meetings, whether he is there or not? A. Yes, sir, I do.

Q. Is every man given an opportunity to be there? A. Yes, sir, he is.

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Q. Now does the company have so-called tach charts on their vehicles? A. Yes, sir. We do have tachograph units.

Q. What is a tachograph? A. A tachograph unit is a recording instrument that records three different items on a particular chart, a disc, if you please.

In the outer ring will record the number of miles traveled. In the center portion of the chart it will record how fast this vehicle was driven. In the lower portion there is a small, thin, solid line or cutting. It will indicate how many hours this vehicle was driven, where the engine, where the vehicle was stopped, whether the engine was running or whether it was shut off and so forth.

Q. Now do you know the—what the company does, how those charts are handled? How are they put in the truck, and what is done with them when they are taken out of the truck? What are the regulations on it? A. Heretofore they have been, and they still are being installed by service people at the shop. And they are removed by service people at the shop. And they are maintained at the Dallas shop, all charts are sent in to the Dallas shop.

Q. All right.

Do those charts, as a matter of course, pass over your

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desk? A. No, sir, they do not.

Q. All right.

Tell us about Transport Safety Reports? What are they?

A. Transport Safety Reports are on-the-spot recordings made by the Transport Insurance Company. They have road patrolmen that go out and check vehicles, not only ours but others as well. And in the course of their duties, when they check one of our units, they will follow this unit and give an on-the-spot recording. The time, the location, date, type of terrain, the number of our vehicle, what our vehicle was doing in regard to speed, whether it was well centered in his portion of the roadway, whether the wheels were running in line, mud flaps intact, lights working and so forth.

Q. As a safety matter, what use do you make of those reports as far as you and the driver is concerned? A. As far as I and the driver is concerned, it is a tool to indicate to me whether any of our drivers are getting out of line as far as driving violations are concerned.

Q. Have you ever discharged a man on the basis of a Transport Report? A. No, sir, I never have.

Q. Have you ever discharged a man on the basis of a

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tachograph chart? A. No, sir, I never have.

Q. What is the driver's log? Will you tell us what that is? A. Well, a driver's log actually is a twofold instrument. It is a log and a trip report.

The log portion of it is required by the Interstate Commerce Commission, and it tells the number of hours he has been on duty, off duty, driving or possibly in a sleeper berth. And this log has to be kept accurately within a period of 10 minutes.

Q. Is that a regulation, ICC regulation? A. That is a regulation of the Interstate Commerce Commission, yes, sir.

Q. What is your attitude toward those logs, as Safety Director? A. I just cannot tolerate a man falsifying a log or having a log violation in the respect, we will say, that he stopped for a period of 15 minutes, or possibly stopped for a period of 30 minutes and just logged 15 minutes off duty. We just will not tolerate that. It is against regulations. He cannot do it. We will not tolerate it. We have never tolerated it, and I won't tolerate it now.

Q. It can get the company in trouble too, can't it?
A. Yes, sir, it can. It has a lot of bearing, not only of

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getting the company in trouble from a legal standpoint, but it has a bearing as to whether the company at some future date may wish to acquire further rights and the company's safety record, their log procedures, and so forth, all enter into the picture.

There have been many a request for rights denied just because of a company's bad safety record.

Q. Would that be a reflection on its ability to perform service? A. That is correct, yes, sir.

Q. All right. Now in the latter part of June or early part of July of 1962, did you begin any particular checks or spot inspections of anything? A. Yes, sir I started to make a few spot checks of logs and tach charts.

Q. What do you mean by taking checks? A. Oh, take a fistful of charts at random, just starting through them and looking for violations.

Q. Why did you make spot checks? A. Well, it would be an impossibility to make a complete and thorough check because we receive, oh, I would venture to say in the vicinity of seven to eight thousand tachograph charts each month. It would take at least two people on a full-time status to screen each and every chart that comes into our

company. It would be an impossibility to do that by yourself.

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Q. Now as far as terminations are concerned, have you ever terminated a man even on a second offense on a tach chart or safety report? A. No, sir, I have not.

Q. For what reason have you terminated a man? A. The only way I will terminate a man for a violation of safety regulations, such as speeding and so forth, is if I observe him personally.

Now should I receive a Transport Insurance Report indicating to me that this man is not abiding by the rules and regulations of the state laws, I will attempt at my earliest convenience to get out there and personally check this man to see if he is doing such a thing, after he possibly may have been warned.

But I will never discharge a man on the strength of the Transport Reports or the tachograph charts alone.

I won't discharge a man if I go out there and check him and catch him the first time in person. If that is his first offense, if I get out there and check him personally, visually, myself, and that is the first violation I will not discharge him. I will give him a warning letter.

Q. That is also bound by union contract too? A. Yes, sir, bound by union contract.

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Q. (By Mr. Schoolfield) In your judgment could you substantiate dismissal of a person in a grievance committee based on a tach chart or safety report made by someone else? A. Not on those alone, no, sir.

Mr. Richards: Ojection. I think again the contract is the best evidence of what it requires, and I don't think his personal judgment as to what the contract requires is truth or probative.

Mr. Schoolfield: I didn't ask him that. I asked him if in his judgment he could substantiate a discharge on a tach chart of transport report alone in a grievance case.

Trial Examiner: You may ask him.

Q. (By Mr. Schoolfield) Your answer? A. My answer was, "No, you could not substantiate a discharge on those instruments alone."

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Q. What, in your experience, is a primary cause of al-

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most every accident? A. Well, I would say that speed is a causative factor, a primary causative factor in almost every accident. I won't say every accident, I don't mean every accident. When I say speed, I don't mean speed in violation of state and local regulations. In some cases it is just speed too fast for the particular conditions that exist at the same time, such as weather.

Q. You are saying a man could be in violation of company rules even in the speed limit? A. That's right.

Q. Depending on the road, the weather. Is that right? A. Yes, that is right.

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Q. Mr. Barr, I am handing you an exhibit marked Respondent's 44 for identification.

(The document above-referred to was marked Respondent's Exhibit No. 44 for identification.)

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Q. (By Mr. Schoolfield) It is a clipped-together exhibit, I assume of 12 pages, and ask you if you will tell me what that is, please, sir? A. Yes, sir, those are the monthly statistics that I worked up.

Mr. Avedon: May we have a copy?

The Witness: This is the only copy we have right now. We will see that you get copies.

That I make up for Mr. English and all of the members of the staff—when I say staff, the Vice President, people who operate Red Ball Motor Freight, Inc.

In the first column it gives the number of accidents for this year, then the number of accidents for the previous year, the mileage and number of miles per accident and frequency and so on.

And as you can see, in December of 1961, we ended up with 72 line-haul accidents compared to 106 in 1960, which I felt was a real good showing, due to the fact that we did get started in the safety program rather late in the year.

In other words we had a 10.6 percent increase and we had 32.1 percent decrease in accidents.

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A. No. 45 are the, is the line-haul and mileage accident report for January of 1962, where we show a 13.6 percent decrease in line-haul accidents, and an 18.8 increase in mileage.

Q. Now I am going to ask you to look at Respondent's Exhibit No. 46 for identification, and have you identify that. (The document above-referred to was marked Respondent's Exhibit No. 46 for identification.)

A. No. 46 is the vehicular accident-mileage report for February, 1962, where we had 17.7 increase in mileage and a 10.5 decrease in accidents.

Q. Now what is that compared to again? A. That is compared to it for the same period, previous year.

Q. All right.

I will hand you Respondent's Exhibit No. 47 for identification.

(The document above-referred to was marked Respondent's Exhibit No. 47 for identification.)

A. This is the vehicle and mileage accident report for the month of March, 1962, where we had a 16.79 increase in mileage and a 38.46 percent increase in accidents.

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Direct Examination Continued.

Q. (By Mr. Schoolfield) Now as a result of Respondent's Exhibit No. 47, that is the March report, did you make up a memoranda or direct a memoranda to anybody? A. Yes, sir. I decided to tighten up on the safety program and see if we could bring this into a screeching halt, so to speak.

Q. Did you prepare a memoranda to anybody on that basis? A. I prepared a memorandum to Mr. Fisk, I believe it was, and the general staff, if I am not mistaken.

Q. Was any memoranda sent to all the terminal managers? A. I sent a memoranda to all the terminal managers, yes, sir.

Q. Was it at this period? A. Yes, sir, I had sent a memorandum to all of the terminal managers. I don't happen to have it with me. I didn't happen to bring it with me. I can bring it.

And I was really emphatic, so to speak, as to what I expected them to do. Because our city picture wasn't too much better than our road picture.

Q. You had had an increase in your accidents in your city pickup, too, is that your testimony? A. Yes.

Mr. Avedon: Can you tell us when this memo was sent out?

Mr. Schoolfield: We are going to have to get the memo-

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randu. We are going to produce it. I though Mr. Barr had it. I am in error.

Q. (By Mr. Schoolfield) Now did you have any accidents in January or March of 1962 or in that period inside of

city limits? A. Yes, sir, we had several. As a matter of fact our line-haul accidents were predominantly happening inside the city limits of cities, towns and communities.

Q. Did any of these accidents result in termination of any employees? A. Yes, sir, we had an employee that had been with us approximately 10 years, I believe, from Waco, Texas. His last name was Brown. I don't recall his first name at the present time. Had an accident at the intersection of Zangs Boulevard on the outskirts of Dallas whereby he was driving too fast for conditions that existed and collided with a vehicle.

Q. Did you terminate him for that? A. Yes, sir, I did.

Q. Did you terminate anybody else for this reason? A. A couple of months later we had a man by the name of Laird, line driver.

Q. How do you spell that? A. L-a-i-r-d.

He was following another of our vehicles too close right

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here in the City of Dallas, running into the rear of one of our own units. He was terminated.

Q. All right, sir.

What did you do as far as the safety program is concerned in the month of April, 1962? A. Well, in the month of April I got out and held some more meetings with these drivers, in the month of April and first part of May. And I reemphasized our safety program, including our speed problem.

Q. Do you remember when it was in April that you held meetings in Dallas, if you did? A. Yes, sir, I held some meetings here in the latter part of April. I don't remember the exact date. It was around the 24th, 25th of April, somewhere in that neighborhood.

Q. Could it have been the 24th and 25th? A. Could, yes.

Q. And did you hold any meetings in Houston? A. Yes, sir, I did hold some meetings in Houston. I had the meetings in Houston on May 7th and 8th.

Q. Now would you tell us something about the equipment, these line-haul drivers operate. What is the total weight loaded to that equipment? A. Well, a piece of our equipment, diesel tractor, 40-foot van, loaded to capacity, weighs approximately 72,000 pounds. That is the weight limit in the State of Texas, overall gross weight.

Q. How long is it? A. It is 50 foot long.

Q. Tractor and trailer combined? A. That is tractor and trailer combined. That is the state limit. It is eight feet wide. And most of our trailers are 12 foot 6 inches high.

Q. All right.

Now what did you tell these men at these safety meetings in Dallas and Houston? A. Due to the increase in accidents, I told them that speeding within the city limits of towns and communities and cities would not be tolerated, not one mile. And I also told them that in the City of Houston, that prior to going to the City of Houston after I held the meeting in Dallas, shortly after that meeting we had cause to terminate a man for just that reason.

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Q. Did you normally hold your safety meetings for city drivers when you were out of town? A. If I happened to be in a particular terminal and the terminal manager has got a meeting scheduled for that particular week, and sometimes even when he doesn't have one scheduled, whenever I am in town, sometimes they will hold a meeting at that particular time.

Q. Do you hold meetings in Dallas for city drivers? A. No, sir, I haven't held any meetings in Dallas for city drivers. That has been left to the terminal manager, due to the scale of his operations.

Q. But do you cooperate with the terminal managers?

A. I cooperate with all of the terminal managers as far as getting material for these meetings and so forth.

Q. Now in March, 1962, in Houston, did you talk about driving in cities and towns, speeding at that time? A. Yes, sir, I did.

Q. At any of these meetings, have you ever told the employees they have a five-mile tolerance above the speed limit? A. I have never in my meetings, either in a group basis or on an individual basis, told a driver that he could drive over 45 miles an hour.

Q. And have you ever heard anyone else say that to them? A. No, sir, I have never heard anyone else say that.

Q. Who is the terminal manager in Houston? A. Mr. Otho Foster.

Q. While you were in Houston in 1962, did you check any equipment on the lot? A. Yes, sir, I had a radar unit at that time. And due to the fact that a lot of our city accidents were happening right at our own property, we decided to check some of the units coming into the lot that evening and set up the radar at the far end of the lot to check them coming into the lot. The speed limit on company property in Houston is 10 miles per hour.

We checked several units as they'd come in and made notations of the violators. And Mr. Foster counseled with these gentlemen.

Q. Now when you were in Houston, or these cities on your visits, do you sometimes check on city equipment as far as observation is concerned? A. Yes, sir. Whenever I have the time, I certainly will. Time permitting I always try to make some city observations, no matter where I'm at.

Q. All right.

Now let's go to May of 1962. And you can look at your schedule there if you need to, Respondent's Exhibit No. 43, I believe.

You testified that you held safety meetings the 7th and 8th of May. Is that right, sir? A. That's correct.

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Q. Now I think your schedules show you were in Houston longer than that? A. That's correct.

Q. What does it show as far as May 6th? A. Shows I was in Houston May 7th, 8th and 9th, and I left there on the 10th and went to Tyler, Lufkin, Longview. And I was in those three cities the 10th and 11th, at which time I returned back to Dallas.

Q. Do you recall—go ahead. Are you finished? A. I held line-driver meetings in Houston as well as city meetings. I made road observations both out on the open road and inside the city.

Q. Now did you make line observations in Houston at that time? A. Yes, sir, I did.

Q. When will you generally make your line observations? A. I usually make my line observations if I am holding meetings in a particular area, after the meeting, to see if these fellows, or these men are adhering to what was told them at the safety meeting.

Q. Would you make them at night down there also? A. Yes, sir, make them at night because most of our schedules run at night.

Q. Why do most of your schedules run at night? A. Most

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of our schedules run at night because the freight is being picked up inside the city during the daylight hours, and at the close of the business day for the businessman, our business just starts. And the trailers are loaded out from the hours of 4:00 to 10:00 or 11:00 o'clock at night, and then our schedules departing from, say Houston to Dallas, or Dallas to Shreveport, whatever it may be.

Q. To your knowledge isn't that true of most motor carriers? A. That is true of most motor carriers, yes.

Q. Is that true of East Texas when you were employed there? A. Yes, sir.

Q. Southern Plaza when you were employed there? A. Yes, sir.

Q. Also there is less traffic at night? A. There is less traffic at night, yes.

Q. But the schedules are controlled by the freight, not the traffic? A. That's correct.

Q. Now did you have an opportunity in Houston to make any checks of intra-city equipment while you were there in May? A. Yes, sir, I did.

Q. All right. What day do you recall doing that? You can look at your schedule. A. Well, I made some checks of our city equipment on May 9th, and I checked some bobtails in the morning.

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Bobtail, I might like to explain, is a straight truck having two axles, in most cases, and has a bed, or 16 to 18 foot bed on the truck. It is a closed-type van. It is the truck that is used to pick up and deliver freight.

Along about noon of the same day I came back in. I didn't note any violations. The boys were doing a pretty nice job of driving. I was real proud of them. It may have been the fact that they knew I was in town, I don't know. But I came back in, and I asked the dispatcher if there was any six-wheel equipment out in the city.

By six-wheel equipment I meant tractor and trailer units. He advised me that there were several units over on the north side in the area of the Houston docks.

Q. All right, sir.

What did you do then? A. Well, I got into my car, and I drove over into the dock area. And while driving down through the dock area, I noticed one of our units parked at a dock. And when I did see the unit, I just pulled over into the parking area, and I placed this unit under observation at this time.

Trial Examiner: When you were told there were several units over in that area, were you told who was driving those units?

The Witness: No, sir, I was not.

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Q. (By Mr. Schoolfield) Now what is your habit in observing a vehicle on the road or at any time? Do you make pencil notations or how do you do it? A. Well, I used to make pencil notations. Back in 1957 I ran off the road trying to make a pencil notation, and I discontinued that and bought myself a portable tape recorder. And now when I am working by myself in the car making road observations, I use a portable tape recorder.

Q. Why is it necessary to make a note of these observations? A. So the incident, if any infraction did happen, would remain fresh in my mind. The vehicle number, the location and so on down the line.

Q. All right.

Now after you saw this Red Ball unit at the dock and you pulled on the side of the road, what happened then? A. Well—

Q. Parked? A. Shortly thereafter, there was another Red Ball unit pulled up to this same dock. And I placed both units under observation. And it wasn't too long after that that the first unit that had pulled into the dock left the dock area. And I decided to go ahead and follow it.

In following this particular unit, he displayed a very bad job of driving for a professional driver, by cutting in

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and out of traffic without signaling his intentions, he was speeding 45 miles an hour in a 40-mile zone. He was tail-gating. By tail-gating I mean he was following too close for the speed that he was driving.

Q. Did you make all this on a notation on your tape recorder? A. Yes, sir, I did.

And the crowning glory was the running of a stop light.

Q. You observed this unit doing all this? A. Yes, sir, I did.

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Q. All right, sir.

Did you know who was driving that unit at the time you took the observation? A. No, sir, I did not.

Trial Examiner: You subsequently found out?

The Witness: Yes, sir, upon my arrival at the terminal.

Trial Examiner: That evening?

The Witness: Yes, sir, that evening.

Q. (By Mr. Schoolfield) All right, sir. Did you subsequently find out that this observation report was on a driver named Willingham? A. Yes, sir, it was one Mr. Willingham.

Q. Did you subsequently have a conference with Mr. Willingham with reference to this observation? A. Well,

upon my arrival back at the terminal I went into Mr. Foster's office and told him I had just observed one of our drivers during a very bad job of driving. I wanted to know who he was, giving him the tractor and trailer number of this particular unit. He went to the dispatcher, and in a little bit he came back and told me it was Willingham.

I suggested to Mr. Foster at that time we should have a talk with this man.

Q. All right.

Did you have a talk with Mr. Willingham? A. Yes, I did.

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Q. (By Mr. Schoolfield) Now, Mr. Barr, did you have a conference or talk with Mr. Willingham, in the presence of Mr. Foster? A. Well, Mr. Foster left word for Mr. Willingham to come in just as soon as he had gotten his unit parked. And upon his arrival in Mr. Foster's office, Mr.

Foster talked to him about this load of marble he had picked up.

Q. Did you hear Mr. Foster do that? A. Yes, sir.

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Q. At— A. At City Dock 18.

Q. Now prior to Mr. Foster's talking to Mr. Willingham, did you and Mr. Foster discuss any disciplinary action in regards to this man? A. No, sir, we had not discussed any disciplinary action whatsoever in regard to this man prior to this time.

Q. All right, sir.

Now go ahead, when Mr. Foster was talking to Mr. Willingham. A. Yes. He finished talking to him about the marble. He said, "Mr. Barr has a recording here he'd like you to hear." So I played back the recording of Mr. Willingham's run from the time he left the dock until he got back to the terminal. And he was enroute back to the terminal with one intermediate stop.

And after the recording had been played back to Mr. Willingham, calling all of the violations to his attention, Mr. Foster confronted Mr. Willingham with a question. He said, "Now, Bill, if you were me, just what would you do about this?"

And Bill said, "Well, fire me."

Q. And he said that to Mr. Foster? You heard that conversation? A. Yes, sir, I did.

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Q. All right, sir.

Then what happened? A. Mr. Foster looked at me, and I kind of looked at Mr. Foster. I was kind of dumfounded for a minute. And we discussed Mr. Willingham, and we discussed this matter. And then I found out, Mr. Foster told me he had been having considerable trouble with this man.

He had started to fire him on several other occasions, and due to the expedition of driving that he had performed that

afternoon, plus his attitude with Mr. Foster before, Mr. Foster thought it best that we go ahead and terminate him. At which time Mr. Foster did call him back, and we did, or he did terminate him.

Q. Did you make any calls prior to this to anybody? A. We attempted to get a-hold of Mr. Tatlock, but he wasn't available. He was the Union of Transportation Employees' Business Representative.

Q. Why did you do that? A. It stipulated in the contract we are to notify a member of the Union of Transportation Employees, Business Agent, one of the Business Agents whenever we are about to take any disciplinary action. And we try to comply with the contract.

Upon not being able to raise Mr. Tatlock, we tried to

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get a-hold of Mr. Ray Tyler.

Q. Who is Mr. Ray Tyler? A. He is the committeeman at the Houston Terminal. He had already punched off the clock and left. Calling his home, he hadn't arrived at home, so we weren't able to get a-hold of either one of them.

Q. All right, sir.

What did you do then in reference to Mr. Willingham? A. Well, Mr. Foster told him to come back in the morning and pick up his check. His check would be prepared that evening or in the morning.

Q. You say Mr. Foster called Mr. Willingham back and Mr. Foster terminated him? A. Yes, sir, he did.

Q. Was there any conversation at that time that you recall? A. No, sir, no other conversation.

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the line drivers' meetings. Mr. Hall Nichols attended the meeting on May 7 at Houston, and then we had another meeting for line drivers on May 8th, where I, as I stated before, reemphasized that we were certainly going to en-

force the company rules and regulations, especially the ones pertaining to speed inside the city limits of towns, cities and communities. And in the course of that first meeting on that, May 7th meeting, one of the gentlemen asked me why a certain driver had been terminated approximately a week prior to that. And I told him for doing 35 miles an hour in a 30-mile zone.

That was all that was said in regard to that particular incident.

Q. Who was that driver? A. That was Mr. Gordon Hodgkins.

Q. The driver was terminated, not the driver asked the question? A. No, not the driver who asked the question.

Q. Do you remember the driver who asked the question? A. No, sir, I do not.

Q. All right, sir. Go ahead. A. We continued with the meeting. Later the gentlemen were dismissed and went on about their duties. I went on down to the terminal and visited with several of them.

The following night we had another line drivers meeting.

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As I said before, after having the meetings where everyone should have gotten all the information we presented, I went out to see if these gentlemen were adhering to what we had spoken about.

And in making a road observation, which I checked several units out there, some of them weren't even ours, there was no way in the world of telling who's who out there in the middle of night until you get right upon the unit and get some form of identification. And the last unit I checked, I was getting ready to come on in, was a unit coming south and it was a Red Ball unit.

So I just followed it on the way into the terminal, and on the Expressway coming into Houston. He was traveling 50 miles an hour in what he should have been traveling, what was a 45-mile an hour speed.

Q. That is even on the Expressway where it is posted? A. Even on the Expressway.

Q. Why is that true? A. Because that is the prima facie speed for trucks in the State of Texas.

Q. Is 45? A. Is 45, yes, sir.

Q. All right, sir.

What did you do when you got to the terminal? A. When I got to the terminal, I found out that the driver, I drove

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right up to where he stopped and found that the driver was Hall Nichols. I told him when he had completed his logs and so forth to come on up to the office, that I would like to talk to him.

And upon completion of logging up and so forth, he did come up to the office. And I inquired of Mr. Nichols as to why he went out there and just deliberately did what I told him not to do two nights before.

Q. All right, sir.

What did he say? A. He just kept staring at the ground. As a matter of fact, he never would look me in the eye. He'd just say, "I don't know."

And I continued to talk to Mr. Nichols, and I would either get an, "I don't know," answer or silence. I finally asked Mr. Nichols had he been in my shoes under the same set of circumstances, what would he have done. And he kept staring at the floor, and he kept staring at the floor. I guess he stared at the floor, oh, two or three minutes, never giving an answer.

So I finally said, "Well, Mr. Nichols, I don't intend to stand here talking all night to myself. You may go home and think about this and give me your answer tomorrow." At which time I excused him.

Q. Did you check his log or anything? A. Yes, sir, I

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looked at his log, they were in order, the following day.

Q. All right, sir. A. He did come back. As a matter of

fact the dispatcher called him to go out on a run, and he told the dispatcher he couldn't go until he had seen me. He had come down to see me. That was somewhere in the vicinity of 4:00 or 5:00 in the evening—and got in Mr. Foster's office.

I asked him if he had given that question I had asked him some thought. He said he had. And he said he wouldn't know what to do. I told him that under the circumstances that I was going to issue him two warning letters, one for failure to follow instructions, and the other one for speeding, at which he smiled, thanked me and left.

Q. All right.

Did you subsequently withdraw the two warning letters?

A. No, sir, I did not.

Q. Did you substitute a warning letter for them? I will hand you General Counsel's Exhibit 21, No. 23, 24 and 25, and see if you can tell us what they are. A. Yes, sir, that is the letter that was written to Mr. Nichols.

Q. Which one are you looking at? A. For speeding.

Q. That is 25? A. Yes, sir. That is General Counsel's

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Exhibit No. 25.

General Counsel's Exhibit No. 24 is the letter that I had written to Mr. Nichols for failing to follow instructions.

Q. All right, sir.

Trial Examiner: What was the failure to follow instructions, as differentiated from speeding?

The Witness: Verbal instructions as well as written instructions in the company rules and regulations, say that he will not exceed state and local, I mean state and local regulations. And I reemphasized, I instructed each and every one of them at that meeting on May 7th and 8th that they were not to speed within the city limits of any town, city or community. That was a willful disregard of verbal instructions, as well as written instructions.

Q. (By Mr. Schoolfield) All right, sir.

Now had you observed Mr. Nichols prior to that, some months prior to that? A. Back in March, I believe I did have an occasion to observe Mr. Nichols at a time when I was making road observations in an area from Houston to Huntsville. And then from Huntsville up to Palestine and Tyler. And Mr. Nichols did a commendable job of driving that evening.

Q. Now you issued no letters that evening? A. No, sir.

Q. Did you observe anybody else on that trip? A. Yes,

sir. As a matter of fact we went on into Palestine, and I made a regular ICC inspection of the equipment, logs, strictly ICC, physical safety equipment and so forth.

There was a driver there by the name of Harvey, I believe it was, from Shreveport, unloading freight. And I went on into Tyler and went to bed at a hotel.

Q. Has it been necessary for you to talk to Mr. Nichols in the last two or three weeks? A. Yes, sir, I talked to Mr. Nichols last Saturday.

Q. What did you tell him then? A. In regard to speed, I received a Transport Insurance Report on him where he had been driving company equipment, they reported, at 55 miles per hour. And I had written Mr. Nichols a letter in that respect. And he in turn wrote a letter to me. And I asked that he come in and visit with me, and we did visit last Saturday.

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Now back in July or so of 1961, did you have occasion to talk to any drivers at that time about speed or ICC violations? A. Yes, sir, that was—oh, that was about the time that I was trying to get the safety program well off the

ground.

I was doing a little spot checking of logs and tachograph

charts to see if I had made any type of impression on the drivers.

Q. And as a result of these spot checks, did you talk to any employees? A. Yes, sir, I talked to several employees. I talked to a Mr. Mayberry, Paul Mayberry, and I talked to a Mr. James Hester. I talked to a Mr. Eldon Cathey, and I talked to a Mr. Gordon Hodgkins. One or two others that I don't remember right now.

Q. Did you issue any warning letters as a result of those conversations? A. I did issue warning letters to three of them. I did not issue any to Mr. Mayberry.

Q. Why didn't you issue him one? A. Because there was an error. In checking the log there was an error as far as I was concerned. What I am trying to get at is that I thought there was an error when there wasn't any error. It was just—we just got to visit a little bit.

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Q. (By Mr. Schoolfield) Do you recall your conversation with Mr. Hodgkins at the time you issued the warning letter in July of 1961? A. Yes, sir, to a degree I do remember what was more or less said at that particular meeting.

Q. What was it? A. I called his attention to the log violations and to the speeding violations as indicated by the tachograph charts. And I asked him if he would sign a memorandum to the effect that this matter had been discussed with him. And should further violations occur, he would be subject to dismissal. Which he did sign of his own free will and accordingly.

Q. Did he say anything to you about the violations or anything of that nature? A. He did say, he did tell me that on one particular chart he had been driving 55, but which was the legal limit in this particular state which he was

operating in. And I found out that it was, and that part was laid aside.

But on another chart from a trip, on a trip from Dallas to Amarillo, or Amarillo to Dallas, I don't remember which now, he had exceeded 50 miles an hour. For that I did issue him a warning letter, and which he did accept, and he said he had no excuse for.

Q. Did you have a conversation with Mr. Clem about that time too, I mean Mr. Cathey, excuse me. A. Yes, sir, I did have a conversation with Mr. Cathey in the same vein. And he also signed the warning letter, memorandums, which were, which stood as warning letters.

Q. Did you show him his charts or any charts on vehicles he had driven? A. Yes, sir, I attempted to show him some charts. He refused to look at them. And I just let it stand at that.

Q. All right, sir.

Did you have a conversation with a Mr. Hester at that time, too? A. Yes, sir, I certainly did. On the same, his was in the same vein.

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And a short time after that I was out doing road work, making some road observations, and Mr. Hester was speeding within the city limits of Marshall, Texas. And he was terminated for that violation.

Q. That was subsequent to that time? A. Yes, sir, subsequent to that time.

Q. Did you arbitrate the Hester case? A. Yes, sir, the Hester case was arbitrated, and the company was upheld.

Q. Were you ever present during a conversation between Mr. Dale Scruggs and Mr. H. J. Lewis? A. Yes, sir. Mr. Scruggs brought Mr. Lewis into my office one day and introduced me to him.

Q. Do you remember about when that was? A. It was either back in January or February of this year. And when he brought him in, at the time he brought him in, he

brought him in for dropping a trailer, I believe it was, at Greenville, Texas. And Mr. Scruggs introduced Mr. Lewis to me and told him I was the new Safety Director and that I would discuss this matter with him.

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Q. All right, sir.

Do you know whether or not Mr. Lewis was put on probation by Mr. Scruggs at that time? A. Yes, sir, he definitely was.

Q. Was that done in your presence? A. That was done in my presence, yes.

Q. Did you enter into that conversation at all? A. I didn't enter into the conversation with the exception of advising Mr. Lewis that in dropping a trailer, he is to see that he has a vehicle properly couched, has blocks under the dolly wheels in areas where the dolly wheels might go through the pavement or through the soft earth.

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Q. Did you recall Mr. Scruggs saying anything to Mr. Lewis about run-arounds at that time? A. Yes, he did bring up the subject of run-arounds to Mr. Lewis. And the conversation was in regards to Mr. Lewis advising other drivers that they had run-arounds coming. And in turn these drivers would come in to Mr. Scruggs and want to know if they had a run-around coming. And then Mr. Scruggs would have to sit down and take a great deal of time and explain to them how an individual was dispatched, and why he was dispatched, and he did not have a run-around coming.

And Mr. Scruggs advised Mr. Lewis to cease and desist in this business of causing dissension among the drivers in regard to run-arounds.

Q. You mean he said cease and desist? A. No, he didn't say cease and desist.

Q. Told him to stop it, didn't he? A. Told them to stop it, yes, sir.

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Q. Did you hear Mr. Scruggs tell Mr. Lewis he was going to fire him if he didn't stop it? A. No, sir, he never made no such statement.

Q. Now do you recall some time in May, early May of 1962, the meeting with Mr. Gordon Hodgkins? A. Yes, sir, I do.

Q. Tell us about that, please, sir. That was May of 1962? A. Yes, sir, that was on or about May 3rd of 1962, I believe, and this was a case where I had gone to do some road work. And within the city limits of Corsicana, Texas, I observed Mr. Hodgkins exceeding the posted speed limit of 30 miles per hour by five miles. And this was checked with radar. And also in my vehicle, my car, which has a calibrated speedometer, and I followed him to the first traffic light going north on Highway 75 to Corsicana, and he continued to travel at 35 miles an hour until he slowed down for this light. And after going through Corsicana on the north side of Corsicana near the Adam Hat Factory, he pulled over and stopped. When he pulled up and stopped, I stopped behind him.

I checked his tachograph chart, his logs and so forth, and told him upon his arrival at the Dallas terminal that I would like to converse with him.

And upon his arrival at the Dallas terminal, I did converse with him, reminding him of the meeting just a week

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prior to that whereby I had reemphasized the fact that we definitely wanted the drivers to adhere to the local speed limits in these communities. I also reminded him of the fact that a short time, or several months prior to that, that he had been warned about his speed. And under the cir-

cumstances, placing himself in my shoes, what would he do. And he just advised me that he did not know. And I gave him an opportunity to resign, as I do every driver that is in violation or on the point of being terminated. He did not wish to resign. He told me that I would have to discharge him, at which point I discharged the driver and told him to come in the following morning to pick up his pay check.

Q. Now how far inside the city limits of the City of Corsicana were you parked? Do you remember? A. Well, as far as the city limits sign is concerned, I don't know how far it is inside the city limits. I would say it is approximately a mile from your inside city limits of Corsicana. But from the sign, the 30-mile an hour speed limit sign, it was three-tenths of a mile to the point where I was parked.

Q. All right, sir.

Did Mr. Hodgkins deny to you, or say he was not going 30 miles an hour? A. No, I asked him what his reason was. He could give no reason. He freely admitted that he had

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been speeding at the time he passed me, and he had recognized my car.

Q. He admitted to you that he knew you were there? A. Yes, sir, he knew I was there.

Q. How come you were down there? Were you with anybody at the time you were there? A. Yes, sir, Mr. Ted Lane was with me. This, as I mentioned a week prior to this particular incident, we had this safety meeting. And due to the fact that the accident picture wasn't very rosy, very bright, accidents were on the increase, we decided to—or I decided that we would certainly reemphasize our program, and we would certainly not tolerate violations.

So that evening I was having dinner with Mr. Lane and in the course of the conversation, I mentioned that I was going to do some road work. And he decided to come along with me.

Q. Had you made any preparation for that road work before? A. Well, I had checked with Houston as to the number of schedules that he had that were going to leave Houston. I do that every time I get ready to do road work for the simple reason there is no reason in my going out there and sitting for four or five hours waiting for some trucks to come by, when there won't be any trucks. Where if I know a certain number of trucks are going to be within this particular area within a certain hour or hours, I can

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be in a particular area and make my checks, and then go ahead and leave.

Q. Then you knew some trucks were coming through approximately at the time you were there? A. Yes, sir.

Q. How many trucks came through? A. There were three trucks came through at the time. Mr. Hodgkins was the last of the three.

Q. Mr. Barr, there has been some testimony in this record about Red Ball equipment running in convoys. A. I know of no Red Ball equipment running in convoys since my employment with Red Ball Motor Freight, Inc.

Q. Do you know of any policy about Red Ball trucks running in convoys? A. I know we do not send Red Ball equipment out in convoys. In other words they leave possibly in intervals of 10 or 15 minutes. Occasionally you would have one or two drivers leave together or possibly they will be dispatched together.

Q. But it is not on purpose? A. It is not on purpose, no, sir. We don't have convoys.

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Q. Now, Mr. Barr, where were you parked to observe Mr. Hodgkins? You testified you clocked him by radar. Is that correct? A. That is correct.

Q. Were you on an incline or uphill? What was the conditions? A. The terrain in this particular area, as you are coming into Corsicana, into this particular area, is on a downgrade. Then you come into a short right hand curve. And at this particular curve on the left, there is an intersection there, and there is a 30-mile an hour posted zone. From that 30-mile an hour posted zone in this leveled-off area, it starts on a slight upgrade.

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Q. All right.

Did Mr. Hodgkins file a grievance of any kind with you, or the U.T.E., in behalf of Mr. Hodgkins? A. No, sir, did not.

Q. All right, sir.

Do you know anything about the termination of Mr. Cathey? A. Yes, sir, sure do.

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Q. When was that, sir? A. That termination occurred on or about April 4th or 5th of this year.

Q. All right, sir. Can you tell me, how did you first find out—did Mr. Cathey have an accident of some kind? A. Yes, sir, Mr. Cathey was involved in an accident approximately 10 miles south of Eldorado, Arkansas.

Q. How did you first hear about it? A. My first knowledge of it was the following morning when I received a call from Mr. Forney Nethercutt of Eldorado, Arkansas, stating that Mr. Eldon Cathey had been involved in an accident approximately 10 miles south of Eldorado, whereby the dual drive wheels of his tractor came off and struck a parked car and advised me that the damage would be in the vicinity of \$350.00 and so on.

I told Mr. Nethercutt at the time to complete the accident report and have Mr. Cathey report to me upon his arrival in Dallas, feeling that Mr. Cathey was going to be dispatched back to Dallas, whereby I could interview him in regards to this accident.

Q. Why didn't you suspend him? A. Well, I didn't feel that there were any violations of company rules. I knew of no violations of company rules at that particular time. Had I known that he had violated company rules and regulations, he would have been suspended at that time and sent

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home on a bus.

Q. All right, sir.

What happened to Mr. Cathey? A. Well, Mr. Cathey was dispatched from Eldorado to other points and ended up in Houston. And when he didn't arrive in my office the following day, I checked with central dispatch to find out where he was. And they told me he was in Houston. And I got hold of the dispatcher and told him of Mr. Cathey. They dispatched him back to Dallas.

Q. In the meantime, did you make any investigation of what occurred? A. In the meantime I was awaiting the report of Mr. Nethercutt, which had arrived.

Q. All right, sir.

What did you do when you got that report? A. Well, I studied the report. I still saw no violation as far as company rules and regulations were concerned, and I was waiting for the interview with Mr. Cathey.

Q. Did you contact Mr. Sanders? A. Yes, sir.

Q. In Shreveport? A. Yes, sir. I contacted Mr. Sanders in Shreveport.

Q. How did you do that? A. By telephone.

And in talking to Mr. Sanders, I found out that the

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wheels had been broken off, as stated in the accident report, and that the holes, the lug holes in the Budd wheels—

Q. Is that the name of the manufacturer? A. That is the name of the manufacturer. That is the name of the wheels.

—had been badly worn, and looked like they possibly could have been run that way a good long distance. And

that was what prompted me to find out what had happened to Mr. Cathey. And I found out he was in Houston. And I told them to send him back immediately.

Q. All right, sir.

What did you do when you talked to Mr. Cathey? What did you say, and what did he say? A. Well, I asked Mr. Cathey to give me a description of what had happened. He told me about how the wheels came off simultaneously as he was going down the road. I asked him if he felt anything.

He said, "No, except when the wheels came off, they came off together and one of them hit the car, and one of them went down the bar ditch." Then he told me about calling Mr. Nethereutt and the shop foreman and so forth.

I asked him if he had inspected, made a vehicle inspection upon his departure from Dallas, and he said he did inspect his equipment when he departed Dallas. And I asked him if he had made a vehicle inspection upon his departure from

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Shreveport where he dropped a trailer and picked up another trailer. He said no, he had not made a vehicle inspection of his equipment, tires and so forth, from the time he left Dallas up until the time of the accident.

Q. He stated that to you. Is that right? A. He stated that to me at the time of the interview.

Q. When he stated that, what did you say? A. When he stated that, I asked him if he had knowledge of checking his equipment ever 50 to 75 miles, as far as wheels and tires were concerned? He said, "Yes. I just guess I goofed."

Q. What did you say then? A. I told him that I would have to think about it for a little while. And I thought it over. Due to the fact that the man had deliberately failed to check his equipment when he had an opportunity, even after driving 190 miles into Shreveport, and did not do so, I thought that was a deliberate violation of company rules and regulations. I gave him an opportunity to resign. Mr. Cathey told me that he was not going to resign, that I would

have to fire him, and I said, "Mr. Cathey, if that is your decision, you are hereby terminated."

Q. What—was anything else said? A. No, sir, it wasn't anything else said with the exception that I offered to call the U.T.E. Business Agent at the time. And Mr. Cathey

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said, "That wouldn't do me any good," and he left.

Q. Did you ever call the U.T.E. Business Agent? A. Yes, sir, I contacted Mr. J. C. House and advised him of what had occurred.

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Q. Is that the same list for 1962 that Respondent's Exhibit No. 49 for identification is for 1961? A. That's correct, sir.

Q. Would you look through that and point out the men you have terminated on that list? A. Mr. L. D. Brown, line driver at Dallas. Waco line driver, because of accidents.

Q. Is that the one that happened in the city limits? A. Yes, sir, on Zangs Boulevard. Driving too fast for conditions.

Mr. Zed C. Clements, Dallas line driver, because of creditors.

Q. He filed an unfair labor practice against us, didn't he? A. He certainly did.

Mr. Eldon Cathey was terminated for abuse of equipment which resulted in an accident.

Mr. Gordon S. Hodgkins for speeding.

Mr. Thomas L. Laird, Dallas line driver, for accidents.

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Mr. J. F. Mayberry, Fort Worth, city driver, accidents.

Mr. John P. Todd, Dallas line driver, accidents.

Mr. William T. Willingham, Houston city driver, for speeding, following too close, running a stop sign.

Mr. Lonnie L. Rogers, Dallas line driver. Accidents.

And that is the list for 1962, sir.

Q. What is the last date on that list? A. Well, these aren't chronological order. I believe the last date on here is 5-15-62. Since then we have had several others.

One was a Mr. Lloyd A. Smith who had been employed by the company approximately eight years, for falsification of logs and failing to report an accident. And—

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Trial Examiner: I notice, Mr. Barr, that among all those that you testified to, both from your personal knowledge

and from your records, that only two were terminated for speeding.

The Witness: That's correct.

Trial Examiner: And they were Hodgkins and Willingham?

The Witness: No, there were three, sir.

Trial Examiner: I must have missed the other one.

The Witness: Yes, sir. Mr. James D. Hester was terminated for speeding.

Trial Examiner: Yes, sir, I recall.

The Witness: In the city limits of Marshall, Texas.

Trial Examiner: Yes.

The Witness: All three of these gentlemen were terminated for speeding within the city limits with a town, city or community, which is something I have emphasized that they will not do.

Trial Examiner: Not for speeding over the road?

The Witness: No, sir.

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A. Yes, sir. I have terminated a driver.

Mr. Richards: Just one question at a time so we can impose our objections before he answers his question.

Q. (By Mr. Schoolfield) Yes, sir. Who—

Mr. Richards: And know—

Trial Examiner: Objection is overruled.

The Witness: Mr. Lloyd A. Smith, the line driver that has been employed by Red Ball Motor Freight for approximately eight years was terminated for falsification of logs, failing to report an accident. I terminated him.

Q. (By Mr. Schoolfield) Has there been anybody else?
A. Yes, sir, there has been a driver by the name of James Houston of Shreveport, Louisiana, who was terminated for driving while intoxicated. And he was terminated by myself.

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M. D. HALL

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination

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Q. When did you have to stop working? A. I believe it was on November 10.

Q. When did you come back to work for Red Ball? When did your hand enable you to come back to work? A. January 15, I believe.

Q. All right, sir.

Then you were not in the coffee shop of the Red Ball

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shop, the coffee room on December 2, 1961? A. No, sir.

Direct Examination

Q. (By Mr. Schoolfield) Would you give your name and address for the record, please, Mr. Russell? A. W. H. Russell, 1824 Pritchard Lane.

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Q. Do you work under Mr. Harold Odom? A. Yes.

Q. Oh, incidentally, have you talked with me in the last week? A. Yes.

Q. Do you remember the election November 30, 1961? A. Yes, sir.

Q. Did you vote in that election? A. Yes, sir.

Q. Were you working during that period? A. No, sir.

Q. Where were you? A. I was on vacation.

Q. When did you come back to work for Red Ball? A. First of December.

Q. First of December. Did you work on the 2nd of December? A. Yes, sir.

Q. A Saturday? A. (Witness nods.)

Q. Now when do the men have their coffee at the shop at

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Red Ball Motor Freight in the coffee shop? A. Well, we get a break at 10:00 and 3:00 in the afternoon.

Q. Now on Saturday you don't work in the afternoon, do you? A. No, sir.

Q. Unless you are on overtime or something, some special job? A. Yes, sir.

Q. Do you have coffee generally before you go to work? A. Yes, sir.

Q. And were you in the coffee shop on Saturday morning before you went to work? A. Yes, sir.

Q. Do you know Mr. William Clem? A. Yes, sir.

Q. Was he present in the coffee shop? A. Yes, sir.

Trial Examiner: What was the answer?

The Witness: Beg your pardon?

Trial Examiner: What was the answer, he was or was not?

The Witness: He was.

Q. (By Mr. Schoolfield) Do you recall other people who were present there? A. I can't recall who was there.

Q. Was Mr. Modisette there? A. I think he was. I wouldn't be for sure.

Q. Was Mr. Lyons there? A. Yes, sir.

Q. Did you see Mr., do you know Eddy Olsowski—well, you know Eddy, we will call him Eddy? A. Yes, sir.

Q. Did you see Eddy in the coffee shop that morning? A. Yes, sir.

Q. Now, sir, it has been testified in this hearing—

Mr. Richards: Objection if you are going to lead the witness.

Mr. Avedon: Ask him what happened.

Q. (By Mr. Schoolfield) All right.

What happened that morning?

Trial Examiner: Unless he is named by some previous witness. Unless this witness is named by some previous witness.

Mr. Schoolfield: He has been named by Mr. Clem as being in the coffee shop when Mr. Eddy Olsowski was there and made certain statements.

Mr. Avedon: Made certain statements.

Trial Examiner: No statements are attributed to this man?

Mr. Schoolfield: No, sir, none at all.

Trial Examiner: I think just ask him if he was there or whatever it is.

Mr. Schoolfield: Yes.

Q. (By Mr. Schoolfield) Did you hear Mr. Olsowski or Eddy make any statements to Clem that morning? A. No, sir.

Q. Did you hear him curse Mr. Clem? A. No, sir.

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Q. Did you see Mr.—or Eddy pin anything by his time card that morning? A. I saw . . . no, huh uh.

Q. All right, sir.

Did you hear Mr. Olsowski say, "There is that no good so and so Teamster?"

Mr. Richards: He has already testified he didn't hear the man say anything to Mr. Clem.

Mr. Schoolfield: And say, "That damn bunch of Teamsters ought to me whipped or shot or whipped with a chain. They are telling a man how to run his company," and then to start to cuss Mr. Clem and then say, "Whoat, Clem, I am talking to you?"

The Witness: No, sir.

Q. (By Mr. Schoolfield) Did you hear him say anything like that to Clem that morning? A. No.

Q. Now did you go into the coffee shop at 10:00 o'clock to have your coffee again that day? A. Yes, sir.

Q. Was Mr.—or Eddy in there at that time? A. I can't recall at that time.

Q. Did you hear any such thing happen to Mr. Clem at that time? A. No.

Mr. Schoolfield: Pass the witness.

Cross Examination.

Q. (By Mr. Avedon) Do you remember the morning of December 2nd, what occurred there? A. Well, we just all had coffee.

Q. Did you have any conversation with any of the people there at all? A. Oh, we just talked is all.

Q. Who was talking? Can you recall? A. Well, Clem, and I don't know, three or four more boys.

Q. Do you remember who they were? A. No, sir.

Q. Was Olsowski sitting there talking with you? A. No, sir, he was at another table.

Q. He was at another table? A. Uh huh.

Q. Do you remember any conversation at all between Olsowski and Clem? A. No, sir.

Q. In other words there was no conversation or you don't remember any? A. I don't remember any.

Q. Can you swear there was no conversion between Olsowski and Clem? A. Not at that time, I don't think, or

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I'd have heard it.

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Direct Examination.

Q. (By Mr. Schoolfield) Would you give your name and address for the record, please? A. C. T. Lyons, 6719 Vanderbilt.

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Q. Where are you employed, Mr. Lyons? A. Red Ball Motor Freight.

Q. What job do you have with Red Ball? A. Truck mechanic.

Q. And who is your boss? Is Mr. Harold Odom your boss? A. Yes.

Q. Do you remember the election on November 30 and December 1st, 1961? A. I do.

Q. Do you remember the following Saturday, a December 2nd? Were you working that day? A. I was.

Q. Did you go into the coffee shop and have coffee when you were working at Red Ball? A. That's right.

Q. Were you in the coffee shop that day? A. I was.

Q. When were you in there first? A. In the morning before work time.

Q. And do you remember who was there, some of the people who were there? A. Well, I know one person in particular. Mr. Clem.

Q. You know Mr. Clem was there? A. That's right.

Q. Did you talk with Mr. Clem that morning? A. I was.

Q. Where were you sitting? A. At the long table.

Q. You and Mr. Clem chatted that morning? A. That's right.

Q. Did Eddy Olsowski come in? A. He did.

Q. Did you see Eddy talk to Mr. Clem? A. No, he didn't say anything.

Q. Did you hear any conversation at all between Eddy and Mr. Clem that morning? A. Not a word.

Q. Did you see Mr.—I mean Eddy pin anything on Mr. Clem's time card that day? A. No, I did not.

Q. Did you hear Eddy say to Mr. Clem, "There is that no good so and so Teamster. That damn bunch of Teamsters ought to be whipped or shot and whipped with a chain. They are telling a man how he should run his company," and start cussing Clem and said, "Clem, I am talking to you." Did Eddy say that that day?

Trial Examiner: Now the question is not that he said it. Did he hear him say it.

Q. (By Mr. Schoolfield) Did you hear Eddy say that? A. No, I did not.

Q. Did you hear Eddy talking to Clem that morning? A. No, I did not.

Q. You were talking to Clem yourself that morning? A. Yes.

Q. How long were you in the coffee shop before you went to work? A. I'd say about 35 or 40 minutes.

Q. What time do you go to work? A. About 8:00 o'clock.

Q. Does everybody go in and go to work? A. Yes, sir.

Q. Now did you go back in the coffee shop later that day to have another cup of coffee? A. I did.

Q. Was Mr. Clem in there that time? A. He was.

Trial Examiner: What was your answer, sir?

The Witness: He was.

Q. (By Mr. Schoolfield) Did any conversation take place with Mr. Clem at that time and Eddy? A. No, not at all.

Q. Was Eddy in there at that time? A. He was.

Q. At 10:00 o'clock? A. Yes, sir.

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Q. That is the 10:00 o'clock break you are talking about?
A. 10:00 o'clock break.

Q. You observed no conversation? A. No conversation.

Q. Heard nothing? A. Nothing.

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P. C. MILLICAN

was called as a witness by and on behalf of the Respondent and, having been first duly sworn, was examined and testified as follows:

Direct Examination.

Q. (By Mr. Schoolfield) Give your name and address, Mr. Millican? A. P. C. Millican, 405 East Texas Street, Grapevine.

Q. Thank you, sir.

Now where, until April of 1962, a few months prior to that, where were you employed, Mr. Millican? A. I was employed with Red Ball Motor Freight.

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Q. Where did you work in Red Ball? For whom? A. Trailer makers.

Q. Did you work for Mr. Harold Odom out there? A. Yes, sir.

Q. Did you know Mr. William Clem out there when you were working? A. I did.

Q. Now have you been laid off from Red Ball Motor Freight? A. I have.

Q. Do you remember about when that was? A. April.

Q. Of 1962? A. Yes, sir.

Q. Were you in a room with a group of others when you were laid off? A. Yes, sir.

Q. Do you remember who else was laid off with you? A. Yes.

Q. Who were they, sir? A. It was Mr. Whitworth, Mr. Moudy.

Q. Mr. Moudy? A. Yes, sir. And Mr. William Clem, and there is one more.

Q. Was it Mr. Yates? A. Yes.

Q. And yourself? A. And myself, yes, sir.

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Q. Now will you tell us what was said the day you were laid off in that group of people? Who did the talking, sir? A. Well, I guess we all had a little round at it.

Q. Did Mr. Odom talk? A. Yes.

Q. What did Mr. Odom say? A. Mr. Odom offered apologies due to the layoff. He assured us that it was not to his liking. But due to an economy within the system, a change of management in the personnel and economy move, he was instructed to do so.

Q. All right, sir.

What else did he say? A. He said that he would be more than glad to assist any of us in seeking other employment. And if we did not find employment within a reasonable length of time, to communicate with him, and he would put forth an extra amount of effort to find us employment.

Q. Did you say anything in that meeting? A. Yes, sir.

Q. What did you say, sir? A. I asked Mr. Odom if I could contract some of the maintenance work on the trailers.

Q. You asked him if you could contract some of the maintenance work? A. Yes, sir.

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Q. What did he say to you? A. He never did say.

Q. Did anybody else say anything in that meeting that you recall? A. Yes, sir.

Q. Who else said something? A. Well, the question of being eligible to bump onto another job was discussed.

Q. Who discussed that? A. I believe Mr. Moudy—

Q. All right, sir. A. —brought the question up.

Q. What did Mr. Moudy say? A. He asked if he would be entitled to bump onto another job.

Q. And who did he ask that of? A. Mr. Odom.

Q. What did Mr. Odom say? A. He said, addressing all of us—

Q. Right. A. —that if we could find a person that we had seniority on and could qualify for that position, that we was welcome or was free to bump for the job or ask for it.

Q. Do you remember anything else that was said? A.

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Well, I believe Clem said that he couldn't bump onto another job. Mr. William Clem, I believe he made that remark.

Q. All right, sir.

Now did Mr. Odom say to Mr. Clem that Mr. Clem was a damn liar, he couldn't bump because he wasn't a member of the U.T.E.? A. No.

Q. Did you ask Mr. Odom if he was going to lay off all those men, how he was going to run those trailers? A. No, sir.

Q. Did Mr. Odom say if he couldn't get those trailers fixed, he was going to drag them any way he could. A. No.

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Q. Let me ask you this, of the five people that were in the office with Mr. Odom, did you all leave at the same time? A. Approximately, yes. We all walked out together.

Q. All walked out together? A. Yes.

Q. Including Clem? A. Yes.

Q. In other words he didn't stay behind? A. No, sir.

Q. You are sure of that? A. Positive.

Q. Any of the men at this meeting say anything about

bumping? A. Yes, sir.

Q. Other than Mr. Odom? A. Mr. Moudy.

Q. Did he ask if he could bump? A. Yes, sir.

Q. Did any of them say they wanted to bump? A. They didn't ask to bump. The question was asked if they could bump.

Q. And all five of the men made no response to this question of bumping? A. No one.

Q. In other words no one said, "I want to bump?" A. No, sir.

Q. "Rather than be laid off?" A. That is true. No one asked to bump.

Q. Mr. Odom, have you told us the substance—

Mr. Schoolfield: Mr. Millican.

Q. (By Mr. Avedon) I am sorry.

Mr. Millican, have you told us the substance of this conversation as best you can recall. Is that the full conversation? A. Yes, sir, I believe it pretty well covers it.

Q. Was anything said at this meeting about how the men had been selected for layoff? A. No.

Q. Nothing was said about how the men were selected? A. No.

Q. No one asked on what basis the men had been selected? A. No one asked.

Q. Nothing was said about seniority? A. Nothing other than what Mr. Odom told them when the question of bumping was raised, as I told you while ago.

Q. Mr. Odom didn't say, "We picked you people to be laid off because you are low on the seniority list," or something to that effect? A. No, I don't recall that.

Q. In other words no reason was given why these people were selected, to you? A. Not these people. Once a blanket reason was given through the main office as to why we were being laid off.

Q. A reason was given to you that there would be a lay-off? A. Yes, sir.

Q. In other words they had to cut expenses? A. Yes, sir.

Q. But no reason was given why the give people who had been called into the office were selected for layoff? A. No, it was not told, and no one asked.

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JOHN BARR,

having been previously sworn, was recalled to the stand and further testified as follows:

Cross Examination.

Q. (By Mr. Avedon) Mr. Barr, with respect to Respondent's Exhibit 50, which is the list of terminations in 1962 — A. Yes, sir.

Q. —you stated you participated in the termination of Mr. Brown. Is that right? A. That's correct.

Q. And the reason given on this form is "Accidents?" A. That's right.

Q. Did you go through his personnel form before you terminated him? A. Yes, sir.

Q. How many accidents was he involved in? A. He had three accidents within a period of a year.

Q. What was the nature of the accidents, what type of

accidents were they? A. They were similar in nature. Driving too fast for conditions that existed.

Q. How much damage was done in the first accident? A. I do not recall, sir.

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Q. How about the second accident? A. I do not recall.

Q. You don't recall in the third? A. No, sir.

Q. Do you know whether there was any personal injury sustained? A. I don't recall.

Q. You don't know on any of the three accidents? A. No, sir.

Q. Do you know if, as a result of these accidents, claims were made against Red Ball by other drivers or pedestrians? A. Yes, sir, I am sure they were.

Q. Was it on all three of them? A. I couldn't answer that, truthfully.

Q. You don't recall? A. No, sir.

Q. Now you said Mr. Laird— A. Yes, sir.

Q. —was discharged because of an accident? A. That's correct.

Q. How many accidents were there? A. One.

Q. What was the nature of the accident? A. Rear end collision.

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Q. What was the collision with? A. One of our own vehicles.

Q. How much damage was done to the vehicle? A. I don't recall, sir.

Q. Was this the only accident that Mr. Laird had had? A. Yes, sir, it is.

Q. Had he had any speeding violations? A. Not to my knowledge.

Q. Had he been warned before? A. No, sir.

Q. In other words this was the sole reason for his discharge? A. That is absolutely right.

Q. Now when you say D.N.M.M.R., that stands for—would you explain what it stands for? A. Does not meet our minimum requirements within the 30-day period to qualify, or disqualify an individual.

Q. This is basically during the probationary period? A. That's correct.

Q. Anybody who was discharged during that period would not be a regular employee of the company, would they? A. That's right, sir. Those are not marked. I believe they are marked by initials.

Q. In effect they are probationary employees you decided you didn't want to have on your regular payroll? A. That's correct.

Q. Now I notice you state failure to report as a cause of many of the terminations?

Trial Examiner: Wait a minute. Let's keep the record straight. This exhibit is in evidence only as to the names of people terminated, and the reasons for terminations in those instances where the witness himself terminated them.

Mr. Avedon: I stand corrected.

Q. (By Mr. Avedon) With respect to all of these people who have failed to report on there, is the reason for their termination you don't know anything about that? A. No, sir, I did not terminate any of them.

Q. Do you know who would do the terminating? A. Possibly the terminal manager.

Q. I see. Now you say Mr. Mayberry was discharged for accident? A. That's correct.

Q. Do you know the nature of the accident? A. Yes, sir, a head-on collision.

Q. This was with another vehicle, I assume? A. With another vehicle, yes, sir.

Q. Do you know the amount of damage involved in that accident? A. Yes, sir, I know the approximate amount.

Q. Well, tell me the approximate amount. A. The ap-

proximate amount was \$3,500.00, both personal injury and property damage.

Q. Now I take it that this was considered a chargeable accident as far as Mr. Mayberry. Is that correct? A. That's correct.

Q. What was the nature of his violation? A. Driving on the wrong side of the road.

Q. Did he receive a ticket from the police for doing this? A. Yes, he did, sir.

Q. How about Mr. Sloane? Did you have anything to do with his discharge? A. No, sir, I did not.

Q. Because there is a check here, and I didn't know whether that was your check or not. A. No, sir.

Q. How about Mr. Todd? A. Mr. John Paul Todd, yes, sir.

Q. What was the nature of his dereliction? A. Abuse of equipment.

Q. In what way? A. In the way that he had an accident prior to this abuse of equipment. He had driven a new tractor, lost a particular muffler on it, didn't even stop to pick it up and continued to drive this tractor with the muffler gone.

If you are acquainted with a piece of diesel equipment,

there is a flame coming out of the exhaust of the tractor. And this flame was right underneath the cab of this truck whereby he could have burned that truck up. He did not burn it up, but he could have burned that particular piece of equipment up, a fairly new piece of equipment, due to his negligence and abuse of the equipment, he was terminated.

Q. Was there an accident involved with another vehicle? A. Not with another vehicle, no, sir.

Q. Just that he lost his muffler? A. That is correct.

Q. I see. How about Mr. Rogers, Lonnie L.? A. Mr. Lonnie Rogers was involved in a jack knife accident. I couldn't pinpoint the location. It was north of Dallas on the way to Amarillo, or coming back from Amarillo. There was no other vehicle involved, just himself.

Q. What do you mean when you say a jack knife? I don't know what you mean by that. A. He lost control of the unit where the tractor and trailer jack knifed, just like you would fold the blade of your pocket knife.

Q. Was this the only accident Mr. Rogers had? A. No, sir, he had another one.

Q. How many did he have? A. I couldn't tell you how many he had. All told he had one or two more.

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Q. —you say you get 7,000 to 8,000 a month come in? A. That is correct, yes, sir.

Q. Who reviews the tachograph charts? What is the procedure followed with respect to the tachograph chart? A. Well, after they get to the Dallas shop, I don't know what procedure is followed in the Dallas shop. I do not receive the charts. The only time that I receive the charts, I understand that they file them by tractor number for a period of a month, and whenever I get ready to make a spot check, I will just go down and grab a fistful of charts.

Q. And these charts would come from every place in the system? A. All over the Red Ball system.

Q. Where over-the-road drivers operate? A. That's correct.

Q. I take it the tachograph is only present in the over-the-road equipment? A. That is correct.

Q. How many over-the-road drivers does Red Ball have? Mr. Mathews: I am going to object to that, Mr. Examiner.

It is in evidence in exhibits, and General Counsel has a copy.

Mr. Avedon: I think there is some question about it.

Mr. Schoolfield: No, there isn't.

Mr. Avedon: This 236, is that the agreed amount?

Mr. Mathews: I am not going to agree to anything. It is in the exhibit.

Trial Examiner. Well, let the witness answer.

Q. (By Mr. Avedon) Do you know? A. I don't know how many total over-the-road drivers we have.

Q. What is your approximate—

Mr. Mathews: I am going to object to the approximation. The exhibit is the best evidence.

Q. (By Mr. Avedon) I show you Respondent's Exhibit 5 which states line drivers, 236. Line drivers would be the same term used as referring to over-the-road drivers? A. That is correct.

Q. This would be the number as far as you know of line drivers that there are? A. That is correct, yes, sir.

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Q. I think you said before that you will not discharge a man on the basis of a visual infraction on just the first time. Is that right? A. If he has never been warned about it before.

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With respect to Mr. Willingham, had he been warned before? A. Yes, he had.

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Q. For what? A. For speeding.

Q. When was that? A. Back in March.

Q. Of what year? A. 1952.

Q. He received a warning for speeding? A. Yes, sir, he did.

Q. By whom? A. I assume he got it from Mr. Otho Foster or Mr. L. V. Simpson in Houston.

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Q. I will rephrase it this way: When a man is given a warning letter, from what I understand you to testify, the warning letter in effect puts him on probation? A. That is basically what it does.

Q. Basically that is what it does. How long does that probation period last? A. Well, under the U.T.E. Contract it is a period of a year, and the Teamster Contract it is nine months.

Q. In other words a warning that was received two years ago would not be taken into consideration in discharging a man? A. Just a current warning.

Q. Just a current warning within the past year? A. Yes.

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Q. In other words, would it be a violation of the company rules for a driver to exceed the speed limit five miles per hour over the road? In other words, do 50 miles an hour in the State of Texas? A. It would be a violation, but as I stated earlier, I have been giving the drivers, over-the-road drivers, on the open road, a five-mile an hour tolerance.

Q. I take it you have never told the drivers this? A. No, sir.

Q. And you have never told the terminal managers or any other company? A. No, sir, I never have.

Q. In other words they have just been doing it? A. I assume they have. We have plenty of evidence to that effect.

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Q. What is the speed limit posted in Houston on the Expressway? A. The minimum is 40. The maximum is 50.

Q. Does it say anything about 45? A. No, sir, it does not.

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Going to July, 1961, do you recall how many charts you checked in that month? A. No, sir, I do not recall.

Q. Could you give me an approximation? A. I couldn't even give you an approximation. I know I looked at several.

Q. I understand you do that on a spot check basis? A. That's correct.

Q. You just walk down and pick up a handful? A. That's correct.

Q. Without looking for any specific drivers? A. No, sir, there are no specific drivers on the charts.

Trial Examiner: Just the truck number?

The Witness: Just the truck number is all that is on the chart.

Q. (By Mr. Avedon) Now I understand.

Trial Examiner: The drivers drive different trucks?

The Witness: They drive different trucks every night, Mr. Examiner, and the drivers' names are not on the charts. The only information that is on the chart is the date, the truck number, origin station and then the starting mileage

and the ending mileage.

Trial Examiner: The only way you know what driver was driving what particular piece of equipment would be to inquire of the dispatcher or someone else at the time?

The Witness: Or to check it against the sign-in and out register.

Q. (By Mr. Avedon) And in July of 1961, I believe you

turned up violations in the tach charts on your spot check of certain individuals? A. That's right.

Q. Among them were Hester, Cathey and Hodgkins? A. That's right.

Q. This was achieved purely on an accidental basis? A. That is absolutely right.

Q. Did you know at that time there was an election in the U.T.E. between Hester and Craig? A. I had heard of it. I wasn't too familiar with it due to the fact I was new with the company. I had other matters occupying my mind at the time.

Q. Those three individuals, including Mayberry, did you detect any other violations from other drivers in July of 1961? A. Not offhand, no, sir.

Q. You warned Mr. Hester? A. That's right, absolutely right.

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Q. Shortly thereafter he was fired for speeding. A. That's correct.

Q. You warned Mr. Cathey? A. Yes, sir.

Q. And in 1962 he was fired for having an accident. Is that right? A. That's correct.

Q. You warned Mr. Hodgkins in 1961 of his speeding violations, according to this tach chart. Is that right? A. Yes, sir.

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Now I understand in this fistful of charts you found a violation, what you thought was a violation, by Mr. Hodgkins. Is that right? A. That's correct.

Q. Showing 55 miles an hour? A. It was a violation.

Q. And you subsequently found this was inaccurate. He was permitted to do 55 in Arkansas. A. In Arkansas, yes.

Q. What did you do at that point? A. I had several other charts there.

Q. By Mr. Hodgkins? A. Yes, sir.

Q. Several of these other charts showed a violation?

A. Yes, sir.

Q. Now these three plus Mr. Mayberry were the only individuals you found whose charts showed violations?

A. At that particular time, yes, sir.

Q. How many charts did you have? A. I haven't the slightest idea.

Q. You don't know? A. No, sir, I don't.

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Q. (By Mr. Avedon) In July of 1961, do you recall how many warning letters you issued for log violations? A. No, I do not.

Q. Do you know if you issued any warning letters other than to Hodgkins, and I believe Cathey? A. I may have, and I don't recall.

Q. You don't recall.

Did you issue a warning letter on ICC log violations to Hester? A. I believe I did, yes, sir.

Q. From the time you started working for Red Ball, which I think was, you say April of 1961— A. Yes, sir.

Q. —up to the time that Hester was fired for speeding, how many people were fired by you for speeding? Do you know? A. General Counsel, I believe I stated earlier that I spent the first month or so getting orientated and—

Q. All right. A. And I believe Mr. Hester was the first gentleman I fired.

Mr. Schoolfield: I'd like to object to that question and have the answer stricken because the Counsel objected very strenuously to us putting in anything that happened in 1961. And the exhibit is still sitting out with no ruling on it by the Trial Examiner.

Trial Examiner: Well, it will show the exhibit is overruled because Mr. Hester's testimony is in the record.

Mr. Schoolfield: There is testimony on it, but there is no testimony on anybody else terminated in 1961, or evidence in this record.

Trial Examiner: The witness told me when I asked him what persons had been discharged for speeding, there were three, Hester was one and Hodgkins and Willingham were the other two. Is that correct?

The Witness: That's correct.

Trial Examiner: And that was all.

Mr. Schoolfield: I figured, the way I understood, that he is getting into terminations in 1961, which I understand which they claim are not in this record.

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Q. (By Mr. Avedon) And I take it your testimony is that between Hester's discharge in July of 1961, the discharge of Mr. Willingham and Mr. Hodgkins, and—Willingham, I believe was . . . what date?

Trial Examiner: May 8th.

Q. (By Mr. Avedon) May 8th. And Mr. Hodgkins, May 3—that no other Red Ball employees were terminated by you for speeding. Is that correct? A. That's correct.

Q. In this period of time did you ever observe any other Red Ball drivers speeding in your observations? A. Mr. Hall Nichols.

Q. All right.

Other than Mr. Hall Nichols? A. I can't say offhand, no, sir.

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and further testified as follows:

Cross Examination continued

Q. (By Mr. Avedon) I believe yesterday, Mr. Barr, you told us you make spot checks on the road from time to time? A. I do, sir.

Q. When did you start this policy of making spot checks? A. Oh, I started it back in, oh, the latter part of June, first part of July.

Q. Uh huh. A. 1961.

Q. I believe you stated that you were in Houston in March. Is that correct? A. In March, yes, sir.

Q. Of 1962? A. Yes, sir.

Q. And you set up a radar unit in the Houston lot? A. That is correct, yes, sir.

Q. How many trucks did you check at that time? A. I don't know, sir.

Q. Can you give me an approximation? A. I couldn't hazard a guess, sir.

Q. Did you find any violations on that parking lot? A. Yes, sir.

Q. How many did you find? A. I don't know, sir. Mr. Foster made notations on the violations.

Q. Did you issue warning letters as a result of those violations? A. I did not, sir.

Q. Do you know whether Mr. Foster did, sir? A. I am sure he did.

Q. Did Mr. Foster tell you? What is the basis of your assumption that Mr. Foster did? A. Mr. Foster told me.

Q. That he would take care of it? A. That he would take care of it.

Q. The units that were coming into—you don't know the total number—you don't know how many violations, is that correct? A. That is correct, yes, sir.

Q. Would it be true that virtually all of the units that you clocked on the Houston lot were violating the company's 10-mile speed limit rule? A. No, sir.

Q. That would not be true? A. No.

Q. I understand from time to time you go out and observe within the cities where Red Ball operates, the city drivers. Is that correct? A. Through the cities that they operate.

Q. Now when you check on city pickup and delivery drivers— A. Yes sir, sure do.

Q. How often do you do that? A. Well, I don't have any set pattern. Just whenever the time or the opportunity affords itself.

I have other duties to perform, that if I have the time when I am in a particular locality, I will perform some in city observations.

Q. In March, 1962, how many observations did you make of city pickup and delivery drivers? A. I don't know, sir.

Q. Did you observe any in March of 1962? A. I don't know.

Q. You just can't recall? A. I just can't recall.

Q. How about April, in 1962? Did you observe any city pickup and delivery drivers? A. I can't recall.

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Q. Do you make a written report to the city terminal managers? A. I either make a written report or oral report. It all depends.

Q. Do you have copies of these reports you make? A. The ones that I have made, yes.

Q. Do you know how many you made in April of 1962, if you made any? A. I don't know that I made any.

Q. How about May, 1962. How many spot checks of city pickup and delivery drivers did you make in that month? A. I made several in May in Houston that I recall.

Q. Did you make any in any other city in the month of May? A. No, sir, not that I recall.

Q. How about June, 1962? Did you make any spot checks of city pickup and delivery drivers in any of the cities on

the Red Ball System? A. In June, 1962, I was pretty busy trying to get ready to reorientate our people in the Southeast Division. We had just acquired the Couch Motor Lines.

Q. In other words, your answer is no? A. No. That is correct.

Q. How about July, 1962? A. I was still busy over on the Couch System.

Q. You made no city checks? A. No.

Q. How about August, 1962? Did you make any checks in any of the cities? A. Well, I was still over on the Couch System.

Q. In other words, your answer is still no? A. Yes.

Q. Now I understood you to say you were in Houston from May 7 through May 10. Is that correct? A. Yes, sir, that is correct, uh huh.

Q. All right.

On May 7, did you do any spot checking of city pickup and delivery drivers in the Houston area? A. I may have done a few.

Q. Well, do you know whether you did or not? A. I couldn't say yes or no. I may have. But I did do some checking in that particular area during that period of time. Exactly at what time and what date and who I checked, right down the line, telling you each and every individual, I couldn't say, no, sir.

Q. Do you know in the period from May 7 to May 10, how

many drivers you checked in Houston? A. Oh, I would say roughly seven or eight.

Q. Seven or eight. That would be city pickup and delivery drivers? A. City pickup and delivery drivers, yes, sir.

Q. Do you know on which days you did that? A. No.

Q. Did you spread it over the entire period? A. It was spread out over that period, yes, sir.

Q. How would you determine how you were going to make your check? A. How did I determine—

Q. How did you determine? A. There was no determination.

Q. I mean what caused you to check the drivers that you did check? A. Nothing caused me to check the drivers that I checked.

Q. Did you do it on a random basis? A. Yes, sir, it was done on a random basis.

Q. Did you check with the terminal managers as to locations? Why did you pick the drivers or trucks that you picked to observe? A. I didn't pick any trucks.

Q. Well, obviously, you said you observed some trucks. A. That is correct.

Q. Did you follow them from the terminal? A. No, sir.

Q. How did you determine where you were going to spot them? A. How did I determine how I was going to spot them?

Q. Right. A. I was following them inside the city. We have quite a few trucks in the city.

Q. Did you just cruise around? A. I just cruised around.

Q. You just cruised around, and then you would spot them? A. That's right.

Q. How long would you follow them when you would spot them? A. Oh, it would vary. Sometimes 30 minutes, sometimes 45 minutes, maybe an hour.

Q. Did you ever say, sit in a place waiting for them to come by? A. Yes, sir.

Q. Where was that? A. At the City Dock 18.

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Q. Now in going down McCarty Drive, what did you see? A. This unit attempted to pass a slower moving truck, and switched over to the left hand lane of traffic. And there

was a little foreign car in front of him. He didn't signal his intention to change lanes. There was a slower, I mean he got behind this little foreign car. The foreign car suddenly decided to make a left hand turn. He jammed his brakes on, applied his brakes on rather suddenly, whipped back behind the slower moving truck again.

Then as soon as he got by the foreign car, as soon as they both got by the foreign car, he whipped in the left hand lane again, went by the slower moving truck, went back into the right hand lane, never once signaling his intentions.

Q. What speed was he traveling? A. He was traveling at 45 miles an hour. This was a 40-mile zone.

Q. How do you know he was doing 45? A. I have a speedometer in my car.

Q. You clocked him on your speedometer? A. I clocked him on my speedometer, yes.

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Q. Did you spot any other vehicles that day after you spotted the vehicle which you subsequently learned, according to your testimony, was Mr. Willingham's? A. You mean that evening?

Q. That afternoon or that evening. A. No, sir, I followed him on into the terminal.

Q. The next day did you spot check any vehicle? A. No, sir. The following day, later on in the day, I left Houston, after we had some meetings. And I went on to Tyler.

Q. And in checking the vehicles that you said you spot checked, both bobtails and—did you spot check any other six wheel equipment, other than Mr. Willingham? A. That was the only one I had an opportunity to check.

Q. That was the only one you had an opportunity to check? A. Yes, sir.

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Q. Now when you got back to the terminal, Mr. Willingham was called in by Mr. Foster. Is that correct? A. Yes, sir, after we got back to the terminal, yes, sir.

Q. And I understand you played this recording back to him that you had made? A. Yes, sir, that is correct.

Q. Did Mr. Willingham—what did Mr. Willingham say about what was on the tape recording? Did he admit he committed these violations? A. He didn't say much of anything there. And Mr. Foster asked him a question—

Q. My question was, did he say whether he had done this, or did he deny that he had committed all of these violations you had accused him of? A. He did not just outwardly deny it. He denied running the stop sign. That is the only portion of it he denied.

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Q. Now I think you said yesterday that there was another violation against Mr. Willingham prior to this. A. I was told so by Mr. Foster, yes, sir.

Q. Do you know what that violation was? A. Speeding on the company yard, yes, sir.

Q. That is prior speeding? A. Yes, sir.

Q. When you were present. Is that right? A. That's correct.

Q. You didn't issue the warning to Mr. Willingham on the speeding on the company yard? A. No, sir, I did not. That was handled by Mr. Foster.

Q. I take it you tried to get a hold of Mr. Tatlock and were unsuccessful? A. That's correct.

Q. You also tried to get a hold of another committeeman and that was unsuccessful? A. I tried to get a hold of a U.T.E. Committeeman.

Q. That's right. U.T.E. Line Committeeman? A. Yes.

Q. And you fired him without getting hold of these com-

mitteemen? A. That's correct, sir. He was terminated before the committeemen were gotten in touch with.

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Q. Now I think you said on May, in May you were also in Houston, and you went out on the highway to make certain observations? A. That is correct.

Q. And you went out on the north, what is known as the North Expressway. Is that right? That is the one going to Dallas, Highway 75? A. I went on Highway 75, yes, sir.

Q. And how many units did you observe coming or going on Highway 75? A. Oh, I would say three or four.

Q. Did you use the radar units? A. No, sir, I did not.

Q. You just followed them. Is that right? A. That's correct.

Q. And what was the speed—you said three or four? A. Three or four, yes, sir.

Q. What was the first unit spotted, what speed was it

doing on this Expressway? A. I didn't check any on the Expressway. I only checked one on the Expressway.

Q. The only one you checked on the Expressway was Mr. Nichols? A. That's correct.

Q. And Mr. Nichols, you found, to be doing 50 miles an hour on the Expressway? A. That's correct.

Q. Where did you talk to Mr. Nichols about his having done 50 miles an hour on the Expressway? A. At the Houston Terminal.

Q. At the Houston Terminal. A. That's correct, sir.

Q. There is no sign on that Expressway saying Trucks, speed limit 45, is there? A. No, sir, there is not.

Q. And you issued two warning letters to Mr. Nichols for his doing 50 miles an hour on the Expressway—strike that.

What is the speed limits that are posted on that Expressway? A. Maximum 50, minimum 40.

Q. And you issued two warning notices to Mr. Nichols for doing 50 miles an hour on that Expressway. Is that correct? A. That's correct. Not two warnings, not for speed.

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Q. My question was two warnings, not necessarily— A. That's correct.

Q. Two warnings, not for the same offense. A. No, sir.

Q. Doing 50 miles an hour on the Expressway— A. One was for doing 50 miles an hour on the Expressway. One was for failure to follow instructions.

Q. And the failure to follow instructions was for speeding on this Expressway? A. That is absolutely correct.

Q. Whenever you issue warning notices, do you usually issue two notices in connection with a speeding violation? A. Not unless I believe that the gentleman just flagrantly and outwardly defied regulations or company rules and regulations. And this was a case when the man evidently just defiantly did what I told him two nights before not to do.

Q. By following the posted speed limits? A. That is correct. I said posted speed limites within cities, towns and communities. That is correct.

Q. But this posted speed limit was 50, wasn't it? A. The prima facie speed limit for trucks in the State of Texas is 45 miles an hour, even though it should be shown higher in the city.

Q. That isn't my question. My question was, your statement was to the men that they were to follow the posted

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speed limits in the cities, towns and villages? A. That's correct.

Q. (By Mr. Avedon) On the day that you spot checked

Mr. Nichols, did you issue any other warnings to any individuals? A. No, sir, I did not.

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Q. Now I think you stated on May 7, 1962, you decided to do some checking. Is that correct, on the open highway? A. May 3? Yes. That was shortly after we had a line drivers meeting here in Dallas.

Q. What time did you decide to go out there? A. Oh, I decided roughly late that afternoon.

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Q. About what time would that be? A. Oh, late in the afternoon, evening, around dinner time. Somewhere in there.

Q. Did anybody go with you? A. Mr. Ted Lane.

Q. And he was the Terminal Manager at Dallas at that time? A. Yes, sir, that's correct.

Q. Prior to this time, had Mr. Lane ever gone with you on the open highway to make a speed observation? A. No, he had not gone with me prior to that. But Mr. Lane has gone out and made road checks by himself.

Q. No, sir, not my question. Just limit your answer to the question I ask you, and we will get along a lot better. A. All right.

Q. Now I understand that you checked with Houston to find out if there were any runs due. Am I quoting your testimony correctly? A. I checked with Houston, asked him how many schedules he had coming out of Houston and at approximately what time.

Q. All right.

How many schedules did they say they had? A. He stated they have several coming out.

Q. How many? Did he give you a number? A. No, sir, he didn't give me a number.

Q. No number? A. No definite number. He just said he

had several schedules.

Q. Did you ask him to dispatch these vehicles earlier or change their normal method of operation? A. No, sir, I did not ask him to change their normal method of operation.

Q. In other words, you didn't ask that the vehicles be dispatched earlier than their normal departure time? A. No, sir.

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Q. (By Mr. Avedon) How many trucks did you observe coming through Corsicana that evening? A. Three trucks.

Q. Did you stop any of the other trucks? A. No, sir, I did not.

Q. Other than Mr. Hodgkins? A. No, sir, I did not.

Q. Did you observe a violation by any of the other trucks

other than Mr. Hodgkins? A. No, sir. There were no violations. If there had been, I would have gotten up and followed them.

Q. Do you know a driver by the name of T. W. Lee? A. Yes, sir, I sure do.

Q. Did you make a check of Mr. Lee on this occasion in Corsicana, Texas? A. I don't know whether I did or not, sir.

Q. Have you ever issued a warning to Mr. Lee for doing more than the speed limit in Corsicana? A. No, sir.

Q. Never did? A. No, sir.

Q. I take it the first two trucks came through, you found no violations? A. That's correct.

Q. Did you follow these trucks through Corsicana? A. No, sir. They were abiding by the speed limit. There was no need to follow them.

Q. In other words you just spotted them on radar, and that was it? A. Yes.

Q. Then Mr. Hodgkins came through, and you found him doing 35? A. I didn't know who it was until he stopped.

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Q. You found him to be doing 35? A. That's correct.

Q. Then you pulled out and followed him? A. That's correct.

Q. What time was this that Mr. Hodgkins was spotted by you? A. It was sometime after 12:00 o'clock.

Q. 12:00 midnight? A. Yes, sir.

Q. What were the road conditions at the time? A. Pavement was dry.

Q. Was the traffic heavy? A. No, sir, it wasn't.

Q. You followed Mr. Hodgkins until he pulled over, and then you pulled over beside him. Is that right? A. Pulled in behind him.

Q. Pulled in behind him.

You stated to Mr. Hodgkins that he had been violating the speed laws. Is that right? A. I didn't say anything to him in regards to the violation out there on the highway that night.

Q. What did you say to Mr. Hodgkins? A. I checked his

logs, checked his tachograph chart, his safety equipment, and I advised him upon his arrival in Dallas I would like to talk to him.

Q. You didn't state anything to Mr. Hodgkins about his having violated any of the company rules? A. Not at that time.

Q. You didn't warn him driving the rest of the distance he'd better drive, obey the speed limit? A. I think the fact I was there and he saw me was a turn in that regards.

Q. That doesn't answer my question. Did you, or didn't you? A. No, sir, I didn't.

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Q. (By Mr. Avedon) Do you recall you issued two letters in 30 days for speeding violations to Robert Sammons? A. I may have.

Q. Do you remember this? A. I didn't say I have. I have issued quite a few warning letters in the past six or seven months.

Q. Is Mr. Sammons still working for the company? A. Yes, he is.

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Q. (By Mr. Richards) Do you have a fixed rule that every person who has two speeding violations will be discharged? A. There is no fixed rule, Mr. Richards. Now if a man—let me illustrate.

Q. Fine. A. I am going back to what I said, a man could have two or three violations on a Transport Safety Report. He could have two or three violations on a tachograph chart. But he will not be discharged until I personally observe him after due warning.

Q. All right.

In the case you have just described— A. All right, sir.

Q. Would that person be automatically discharged when you caught him speeding? A. When I caught him speeding, if there was more than one violation, yes, sir.

Q. So your testimony is any time a person has two violations, there will be automatic discharge? A. That is not my testimony.

Q. What is your testimony? A. My testimony is he

doesn't have to have two violations. It could be more than two. It could be five or six.

Q. Well, let's take the case of the man who has a warning notice issued by virtue of a tachograph chart or Transport Safety Report. Subsequently you detect him speeding with your radar unit. Is the testimony that your fixed practice there would be to discharge him? A. If he has a warning notice or two warning notices or three warning notices that are in effect, he would have been discharged, yes, sir.

Q. All right, sir.

Referring again to your deposition—A. You'd be lost without that deposition, wouldn't you?

Q. Yes, I would. Convenient recollection.

Question: "All right, sir. Do I understand then that it is

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your company practice that any time a driver commits a second offense of speeding, it is cause for automatic discharge; is that your testimony?"

Answer: "That is not my testimony."

Question: "I take it your testimony is there is no fixed practice in this regard?"

"Mr. Mathews: He said that three times."

Your answer: "There is no fixed practice. Each case is based on its own merits."

Now did you so answer in response to my question?

A. That's correct. And that is just what I got through telling you.

Q. I just wanted to be sure. A. I just got through telling you the same thing.

Q. I was a little bit hard of hearing, I guess. A. I guess you were.

Q. Now do you have any company fixed rules with respect to discharge on chargeable accidents? A. No fixed rule.

Q. Each case is judged on its own merits? A. Each case is judged on its own merits.

Q. And your discretion? A. And my discretion, yes, sir.

Q. You made the decision for this discharge of Gordon Hodgkins, did you not? A. That's correct.

Q. When did you make that decision? A. When did I make that decision? On my way back to Dallas that evening.

Q. Then I take it you didn't take the time to check Mr. Hodgkins' personnel file before you reached that decision? A. I don't recall whether I did or not.

Q. Well, if you made the decision on the way back to Dallas, you didn't take his personnel file back with you? A. Oh, no, sir, I didn't.

Q. And you made the decision on the way back to Dallas? A. Yes.

Q. So you didn't take the time to check his personnel file before you left, then? A. I had time, but evidently didn't.

Q. If you recall after the Hodgkins' incident in Corsicana, how many other Red Ball trucks were driven through that evening? A. I answered that question several times. Now—

Q. With the word, "Several," and I just wondered, is that your testimony? A. Pardon me, sir?

Q. You answered it by saying "Several." A. It's been asked two or three times.

Q. My notes must be bad. How many more were due through that evening? A. I don't know how many were

due through.

Q. There were several, there were some more due through? A. I am sure there were, yes, sir.

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Q. Did I understand your testimony to be you apply some different character of testimony to speeding on the open

road and speeding in corporate city limits? A. I don't understand what you mean by test—

Q. Mr. Barr, I thought your test was drawing some distinction between someone driving five miles an hour over the speed limit in the open road and five miles an hour in the city? A. What do you mean by distinction?

Q. One is more distinct than the other?

Mr. Richards: Maybe you can read it back.

Trial Examiner: Never mind. That you do allow, I think you said, a tolerance.

The Witness: I personally allow a tolerance of five miles.

Trial Examiner: Is that applicable to the city speed limits?

The Witness: No, sir, it is not.

Q. (By Mr. Richards) Then your answer to my question is you do not make a difference or distinction to the speed limits in corporate city limits and five miles on the outside, on the open road? A. There is a differential between the two.

Q. Well, you personally apply a differential? A. I personally applied it. I notified everyone of this application.

Q. Of what application? A. I have notified everyone of speeding within a city, within a town or community, would not be tolerated one mile.

Q. What have you said with regard to the open road? A. I haven't.

Q. But you have—A. I told them that not one mile would

be tolerated in the cities.

Q. Have you indicated you would tolerate speeding on the open road? A. No, sir, I have not.

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Q. (By Mr. Schoolfield) Mr. Yates, will you give your name and address for the record, please, sir? A. Ralph A. Yates, 1231 Oak Meadow, Dallas, Texas.

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Q. Were you laid off by yourself or in a group of other people? A. It was in a group.

Q. Who was in that group, do you recall? A. Well, I remember Moudy, Whitworth, myself, and a boy by the name of Clem.

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Can you tell us what Mr. Odom said about the layoff at that time, if you recall? A. Well, he stated it was a general layoff. They was laying off over the whole Red Ball System, the way I understood it.

Q. All right, sir.

What did you say? Did you say anything to that? A. No.

Q. Did anybody say anything? A. As far as the layoff, the only thing I can remember of anybody, just what are you—

Q. Well, did Mr. Odom say anything about bumping rights? A. Mr. Odom didn't.

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Q. Did anybody say anything about bumping? A. Mr. Clem did.

Q. What did he say? A. Mr. Clem said, "What about bumping somebody?" That is not his exact words, but as near to as I remember. He said, "I am not qualified to bump—" because he was not a member of the U.T.E., but that Moudy was able to bump. And Mr. Harold come back and told him, he says if anybody is qualified or classified

to handle any job that they could bump on, that they'd be investigated and see that it was taken care of.

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Trial Examiner: Did he say anything about seniority?

The Witness: Well, the only thing brought up about seniority is when Clam brought it up about Moudy and the bump Moudy had coming.

Q. (By Mr. Avedon) The subject of bumping was brought up at this meeting? A. That's right.

Q. And it was brought up by Mr. Clem? A. That's right.

Q. Did Mr. Odom bring up the subject of bumping before Mr. Clem did? A. No, sir.

Q. And Mr. Clem said, "What about bumping?" A. Mr. Clem said, "What about bumping?"

Q. Yes. What did he say? He made some comment about bumping. Will you repeat exactly what he said? A. Well, the nearest I can remember, he said what about the men that had a bump coming, that he was not eligible for a bump.

Trial Examiner: He said, "I am not eligible?"

Q. (By Mr. Avedon) Did he say why? A. Because he was not a member of the U.T.E.

Q. Did Mr. Odom say anything when Mr. Clem made that

statement? A. (No response.)

Q. About him being a member of the U.T.E.? A. No.

Q. What did Mr. Odom say about bumping rights? A. Well, he told him anybody that was qualified for the job, they were able to bump under, he would take care of it.

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Direct Examination

Q. (By Mr. Schoolfield) Mr. Whitworth, would you give your name, and address, for the record, please, sir? A.

William C. Whitworth, 3603 Dawes, Dallas.

Q. 3603 Dawes, Dallas.

Where do you work, Mr. Whitworth? A. Sheeley Trailers.

Q. Did you ever work for Red Ball Motor Freight? A. I did, sir.

Q. Where did you work? What was your job with them?

A. (No response.)

Q. You worked in the trailer shop at Red Ball? A. Yes.

Q. Did you work under Mr. Harold Odom? A. Under Mr. Odom and under Cotten.

Q. Were you ever laid off at Red Ball? A. Yes.

Q. Do you remember when, about when you were laid off?

A. The 16th day of April, 1962.

Q. Were you in a group of other men when you were laid off? A. I was.

Q. Do you remember who was in the room when you were laid off? A. Not in the room, Mr. Schoolfield, but out of the trailer shop.

Q. But I mean who was it, how were you laid off—who talked to you to tell you you were all laid off? A. Yes.

Q. Was anybody else in the office with you? A. Yes, I believe the five of us out of the trailer shop.

Q. Do you remember who they were? A. Myself, Mr. Yates, Mr. Moudy, William Clem and Bill Millican, I believe.

Q. All right, sir.

And Mr. Odom was there? A. Yes.

Q. Do you remember what Mr. Odom said about the lay-off? A. Well, we were called in Mr. Odom's office. Walked in, there was nothing said particularly. When we first walked in, one of the boys remarked that it looked like something was happening, and Mr. Odom said yes. He had orders from the higher-ups to cut down on expenses, and therefore it was a layoff system-wide.

Q. All right, sir.

Were bumping rights mentioned? A. The only bumping rights mentioned was by Clem.

Q. All right, sir.

Do you recall what he said? A. Well, it was after Mr. Odom had given the checks out. And Clem said he wasn't a member of the U.T.E. Union so therefore he wasn't qualified to bump. But Moudy was, for his seniority, was qualified to bump. And Mr. Odom told him that anyone

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qualified for the job with seniority over the person holding that job would be considered for the bump.

Q. What did you do then, get up and leave? A. Yes, we kind of milled out. Mr. Odom said if he could help any of us in obtaining work or anything like that, he would be glad to do so.

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981

Direct Examination

Q. (By Mr. Schoolfield) Give your name and address for the record, please. A. My name is Otho Foster, O-t-h-o. I live at 1715 Maux Drive, Houston, Texas.

Q. By whom are you employed, Mr. Foster? A. Red Ball Motor Freight.

Q. What is your job with Red Ball? A. I am presently Terminal Manager of the Houston Station.

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Q. How long have you been down there as Terminal Manager? A. July 5th, 1960.

Q. July 5th, 1960.

Where were you before that? A. I was in Amarillo, Texas.

Q. What was your job up there? A. I was District Super-

visor for Red Ball Motor Freight over the northern Territory.

Q. Did you ever work for the Denver-Amarillo Express?

A. Yes, sir.

Q. What was your job with them? A. I was General Manager of that company from 1944 to 1956.

Q. And when did you come to work for Red Ball? A. December 19, 1956.

Q. When Red Ball purchased the Denver operation? A. Yes, sir.

Q. Now, Mr. Foster, do you have a shop in Houston, a maintenance shop? A. Yes, sir.

Q. And during the year 1962, can you tell us whether or not you have had some layoffs down there? A. We have had, this year, yes, sir. Back some time in April we laid off four men.

Q. Out of a total of how many? A. 11.

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Q. Cut her four? A. Yes, sir.

Q. Have you had any cuts since then? A. Yes, sir.

Q. When did you have that? A. August of this year laid off two more.

Q. Do you know, or were you told the reason for these layoffs, why you were forced to cut? A. Reduction in forces to save expenses.

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Q. Now do you recall a period in March when Mr. Barr was visiting your terminal, in 1962? A. Yes, sir.

Q. March of 1962? A. Yes, sir.

Q. Do you recall whether or not you and Mr. Barr set up a radar unit on your lot around your terminal? A. We did, shortly before sundown, yes, sir.

Q. What did you do that for? A. Check the speed on the equipment coming into the terminal lot.

Q. Do you remember how many people you checked that day? A. No, offhand I don't, sir. I would say 15, 18.

Q. 15 to 18? A. Yes, sir.

Q. Did you find anybody in violation? A. Yes, sir.

Q. What is your speed limit down there? A. 10 miles per hour.

Q. Did you talk to those that you found in violation? A. We warned three men, yes, sir.

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Q. (By Mr. Schoolfield) Mr. Foster, I am going to hand you three instruments marked for identification as Respondent's Exhibits 52, 53 and 54, and ask you if you recognize those, please, sir, and know the individuals named thereon? A. Yes, sir.

Q. Tell me what 52 is, please, sir? A. 52 concerns a warning of Mr. Roy Peoples.

Q. When did that infraction occur? A. On March 27, 1962.

Q. What was he warned for there? A. Speeding through the gate at 22 miles per hour.

Q. All right, sir.

Would you look at No. 53 for identification and tell me what that is? A. That is a warning to Mr. Luther Willingham for speeding on Company property at 16 miles per hour.

Q. All right, sir.

Now would you look at 54 and tell me what that is for? A. Yes, sir. That is a warning to Mr. W. T. Willingham who came through the gate at 18 miles per hour, picking up to 35 miles an hour before he got to the back of the yard.

Q. All right, sir.

Did you talk to those men personally, or were those men talked to about this? A. They were talked to by Mr. Alvin

Simpson. I did talk to Mr. Bill Willingham about this myself the next afternoon.

Q. About this sort of thing. Did you type that up yourself? A. Yes, sir.

Q. But you asked Mr. Simpson to talk to the men about it? A. Yes. That is the information he gave me while he sat there. I typed it up.

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Q. (By Mr. Schoolfield) You observed these violations, though, yourself, did you not, sir? A. That's correct.

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Now did you sometime later discharge Mr. Willingham? A. Yes, sir.

Q. Would you tell me about that, please, sir? A. Yes, sir, Mr. Barr was in Houston making some observations. He came into the office shortly after 5:00 o'clock. I don't

recall the exact time. He gave me a tractor number, trailer number, and asked me to find out who was driving it, which I did. I found out it was Mr. W. T. Willingham. And I requested his presence in my office.

Q. All right, sir.

What happened when he got in your office? A. Came in the office, and I of course, he was down there to pick up a lot of marble. We had a lot of damage on marble due to the fact we laid it down flat.

I first asked him how he loaded the marble. He told me that the people down at the dock laid it flat, even though I told him to stand it straight up.

Q. What kind of equipment was he driving to pick up that marble? A. He was driving a road tractor and pulling a 40-foot trailer.

And when he came in, I asked him how the marble was loaded. He told me—I told him just to have a seat in the chair there, that Mr. Barr had a recording on a machine there we wanted to play back to him.

Q. All right, sir.

What happened then? A. He sat down. We played the recording to him. After he listened to it, he, I believe he denied running the stop sign.

So I, best I remember, I asked him, I said, "Well, Bill,

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if you were in my place, as many wrecks as we have been having due to flagrant violations of all company rules and regulations, commission, state, county and city, and a man in Mr. Barr's position came down and checked you and found you doing everything in the book wrong, what would you do?"

He said, "Well, sir, I don't know. I am not in your position." He said, "But if you think I need it, just go ahead and fire me."

Mr. Avedon: Would you repeat that last? I didn't get that.

The Witness: He said, "If you think I need it, just go ahead and fire me. If I done enough wrong to fire me, just fire me."

So I asked him to wait outside a few minutes. He did. John and I discussed it, and we fired him.

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Q. You testified, I believe, you did talk with Mr. Willingham after the radar violation on the company property?

A. Yes, sir.

Q. Do you remember what you said to him? A. Well, yes, sir, I do. I told him, the next day I caught him down on the lot. I said, "Bill, you came in this lot last night like a wild

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man, picked up speed all the way to the back of the termi-

nal, threw on your brakes and slid equipment down there, which you know is dangerous and not right and not the right kind of a job, and I just don't ever want to catch you doing it again."

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Trial Examiner: Refresh my recollection as to this business of helpers. How does it come in?

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Mr. Schoolfield: If my recollection is correct, and I can find it correct, Mr. Willingham indicated on the record he was being discriminated against. We refused to give him helpers.

This is to demonstrate the small amount of helpers we use.

Trial Examiner: Is that part of your case, that contention, or did that merely creep in parenthetically?

Mr. Avedon: I think it basically crept in. One of our contentions, part of our case was there was a change made with respect to Willingham's job, that prior to the election he had been the gas man, and that guy was in a position to do organization work for the Teamsters. Shortly before the election arose, his job was changed, and he was taken from this job of gas man where he was in daily contact with drivers, and was placed out on delivery runs in areas of town and could not do his organization activity.

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998

ture of your discussion with the drivers? A. As I related a moment ago, my discussion with the drivers was the one contract versus the other.

Q. And were you trying to indicate to them which, in your opinion, was the better contract? A. That is correct, sir. That is about the only liberty we got left. And I was sure trying to get it over to them.

Q. Your indication was you favored the U.T.E. over the Teamsters?

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Q. Prior to that, didn't you have a man who worked steadily at this gas man's job for about 10 years? A. No, sir.

Q. There wasn't a man who was a steady gas man? A. As far as I know there wasn't. I came there in 1960.

Q. Answer the question about 1960. A. He'd change off and on, that is correct.

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Q. (By Mr. Richards) Do you know what time Mr. Barr left your terminal to go out? I guess it was May 8th, wasn't it, when he spotted Mr. Willingham? A. I don't recall the exact date, no, sir. I don't know what time he left.

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Q. You didn't see him leave? A. No, sir.

Q. Do you recall roughly how many pickup and delivery drivers you had operating in Houston at that time? A. Oh, we have an average of, I'd say pickup and delivery drivers, 35 to 40.

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HAROLD ODOM

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Direct Examination

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Q. Since 1950.

Now do you remember a period in November, December,

1961, when there was a Union election on Red Ball Freight, Inc.? A. Yes, sir.

Q. Did you notice any unrest among your boys, or your workers, in Dallas? You're domiciled in Dallas, aren't you, sir? A. Correct.

Q. Around that period? A. Yes, sir. There was a con-

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siderable—

Q. Did you take any part or make any—have any requirements of your men along that time in reference to any election? A. No, sir.

Q. Did you just ask them to keep on performing their work. Is that right, sir? A. Yes, sir.

Q. Now did you see any Union buttons floating around in your shop during that time? A. Quite a few.

Q. Now—

Trial Examiner: Which Union?

The Witness: Both.

Q. (By Mr. Schoolfield) Do you know a Mr. William Clem? A. Yes, sir.

Q. Were you aware of Mr. William Clem's interest in the Teamsters Union? A. I was after September, or along in that neighborhood, September, first part of November, along in there.

Q. In 1961? A. '61.

Q. All right, sir.

How did you become aware of it? A. He told me.

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Q. He told you so? A. (Witness nods.)

Q. Told you he liked the Teamsters Union. Is that it?

Mr. Avedon: Why don't you ask him what he told him?

Mr. Schoolfield: All right.

I will do it.

The Witness: He told me that they had approached them,

that the Teamsters had approached him to represent them and work for them in this election.

Q. (By Mr. Schoolfield) Did he tell you anything more about that? A. Well, he put it in the form of asking me what my opinion of it was.

Q. What did you say to that? A. I told him that he was 21 years old and that was his decision to make.

Q. Where were you when he said that? Do you remember? A. In my office.

Q. Did he say anything about compensation being paid for it? A. Not at that time.

Q. Did he ever mention anything about being paid for it? A. Yes, sir.

Q. What did he say about that? A. The day after the ballot was counted was on December 5th.

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Q. Was that a Tuesday? A. It was on a Tuesday.

Q. What did he say at that time? A. He came in my office and said, asked me if he was fired. And I said, "Not that I know anything about."

Q. Where did he get the information? A. He said that someone told him in Fort Worth that Mr. Fisk said he was fired. I told him that it was news to me, that I sure hadn't heard a word about it. Since I was the man that hired him, I would be the one to tell him if he ever got fired.

Q. All right, sir.

Did you clear Mr. Clem to take off as a Union observer?

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A. I might clarify that. The trailer only goes as high as Second Class. That is the tops in that particular section.

Q. Is that system worked out between you and the Union? Does the Union understand that is the way you operate?

A. Yes, sir.

Q. Did Mr. Clem perform any maintenance on tractors while he was employed by you? A. No, sir.

Q. He worked exclusively in the trailer shop. Is that right, sir? A. Yes, sir.

Q. What kind of work did that require? A. Considerable metal work, cutting, welding, relining brakes on trailers, repairing lights on them and reflooring them, fixing roofs.

Q. Would it require any road work, going out on the road any time? A. Possibly if a wheel bearing burned out or a flat tire.

Q. Now to your knowledge, did Mr. Clem go out on any road calls? A. Yes, sir.

Q. He did, sir? A. Yes, sir.

Q. Did you call him out yourself? A. No, sir.

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Q. Now Mr. Odom, I am going to hand you a group of cards. I am not identifying them at this time because we may not put them on in evidence. And I will ask you to tell me what these cards are. A. They are the time cards covering Clem's entire duty with Red Ball Motor Freight.

Q. All right, sir.

Now would you look through those cards and tell me when, if and when, Mr. Clem received overtime for, while working for Red Ball Motor Freight? A. Yes, sir.

Q. And pick those cards out, if you would. A. (Witness complies.)

Q. Those three cards? A. Yes.

Q. All right, sir.

Would you pick up the first card and tell us what date that card is, if you go by chronological order, if you say—do you remember when Mr. Clem came to work for you? A. On May 9, 1961.

Q. Would you start from that date and just read the times he got overtime in that order, if you could? A. This is on May 14th.

Q. 1961? A. Yes, 1961.

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Trial Examiner: May I ask, was the reason asked for Mr. Clem's discharge?

Mr. Schoolfield: Mr. Clem wasn't discharged. He was laid off in reduction in force.

Trial Examiner: That's right.

The Witness: He made a trip to Buffalo, Texas, to change two tires on a trailer.

Q. (By Mr. Schoolfield) How much overtime did he receive? A. Seven and a half hours.

The Witness: The next card is in July of 1961, and it started on the, July 29th, and ended on July 30th. He made a trip to Hubbard, Texas, and returned, and made another trip to Alma.

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Q. (By Mr. Schoolfield) Have you read in the record the second time, Mr. Odom? A. There is another date on this one. He returned at 2:13, on the morning of July 30th, and was called out again at 3:00 p.m. on July 30th. He didn't make a road call. He was down in the shop making a repair and he was paid three and a half hours overtime for that.

Q. All right, sir. A. The next one is in December and it was December 30, 1961, a trip to Wills Point, Texas, after Delta Trailer No. 4094. And he was paid half an hour's overtime for that.

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Q. (By Mr. Schoolfield) Mr. Odom, did you ever have a conversation with Mr. Clem around Union election where you advised him he would not receive overtime in the future? A. I did not.

Q. Have you given us all the conversation that took place at that time, where Mr. Clem said something about being fired? I think that is what you just— A. Well, I don't remember where we left off on that, Counselor.

Q. Would you give it again then, please, sir, the whole thing? A. He came into my office. His work time was, he started at 9:00 a.m. And this was sometime between eight and nine. He wasn't called in there, he came in. And he said, "Well, am I fired?"

And I said, "Not that I know anything about." Where did he get his information. He said someone in Fort Worth told him that Fisk said he was fired. I told him that I had

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heard nothing about it and as far as I was concerned, he wasn't fired, or that if he was, that I hired him, and if anybody fired him it would be me.

Q. Was there anything else said at that time? A. All he had to do was go on out there and do his job, and he had nothing to fear from his activities. And further, in the conversation, he said, well, it didn't make any difference to him who won the election, that they were paying him for the time he put in working in this election.

Q. Did he say who "they" were? A. The Teamsters.

Q. Did you have a conversation with Mr. Clem in early January? I believe the record states January 5th, over a James Moudy, incident of some kind? Could you tell us about that? A. I had a conversation in January. I don't remember the exact date. Mr. Moudy came into my office after work time and said he wanted to talk to me. I told him to have a seat and tell me what his problem was. I could see he was pretty well disturbed.

He told me that somebody told him that we had hired an employee that was a junior man to him at a higher classification. The man he named was Ralph Yates. And I assured him it wasn't true.

And I called James Braswell who was in the next office

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to bring the records in and so showed him. And I asked him, I said, "Mr. Moudy," his name is James, I said, "James, who put out this kind of information?" He said, "William Clem told me."

Q. Now you heard Mr. Moudy testify this morning, did you not, sir? A. Yes.

Q. He didn't say Mr. Yates. A. No, sir, he did not. He said Mr. Whitworth. He said Mr. Whitworth.

Q. In your judgment he was mistaken? A. He was mistaken. The individual was Ralph Yates. I assured him after I showed him that it was a mistake, to go on back to work and forget it, that I would talk to Clem and straighten it up with him. And I called Clem in there and asked him about it.

I asked him if he told James Moudy that Ralph Yates was hired at a higher classification than he was. He said, "I did not and whoever said I did is a damn liar."

Q. All right, sir.

Then what did you do? A. He invited me to call James Moudy in there and so tell him. I went on with the conversation. I don't remember the exact words. He suggested that again, "Well, call Moudy in here."

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Again I called James Braswell to go out in the shop and bring Mr. Moudy back in, which he did. When Mr. Moudy got in there, I says, "Would you mind repeating what you told me a little while earlier this morning?" And he repeated it.

And I said, "Who told you?" He said, "William Clem."

And Mr. Clem says, "Well, I do remember talking to you working on the trailer, and we were talking about it."

So with a little other conversation I asked Clem to please refrain from spreading rumors out there, there was enough dissention and unrest already, to please stop.

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Q. When did you next have Mr. Moudy and Mr. Clem together in your office? A. Never did.

Q. It never occurred again? A. (Witness nods.)

Q. That was the single and sole incident? A. The only time they were in my office together again was the day of the layoff when the whole group was in there together.

Q. All right, sir.

Now did you have a conversation with Mr. Clem in reference to a transfer at any time? A. Yes, sir.

Q. Will you tell us the circumstances surrounding that? A. We had this opening in Denver for, as I explained earlier, Denver is a secondary shop. There is no major rebuilds or

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I called him.

Q. Did that all happen in one day? A. Yes, sir, same day.

Q. All right, sir. A. I called him and he talked to Mr. Herb Bailey who is the representative over Local 775 in Denver.

Q. All right, sir. A. And he called back. He reported back to me that it was immaterial to them, the Teamster Union in Denver, whom or where we transferred them from. We could transfer anybody in there from anywhere.

Q. All right, sir. A. I so told Mr. Clem.

Q. When did you tell Mr. Clem? A. Well, I didn't get the report back until later on in the day. Before the evening was over I had gone out in the work area and told him this. And, naturally, he said he wanted to talk to his wife about it, which I can appreciate.

It went on for two or three days and he didn't come back and say a thing to me about it. I mean he didn't come give me a direct answer.

So, in several days, I approached him again out in the

shop and asked him what his decision was. He said he had decided, after talking to his wife, he didn't want to take it because of the children they had in school, he didn't

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want to move. But if the job would wait until June, he would go.

I said, "Well, we just about as well forget about it because we have to have somebody up there now." And a few days later we transferred another man.

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Q. Did you have a layoff in April of 1962? A. '62, yes, sir.

Q. Did you select the people for layoff? A. Yes, sir.

Q. How did you do it? A. By seniority, and department.

Q. By seniority? A. Seniority and department.

Q. All right, sir.

Now did you lay off anyone in the tractor shop in April?
A. No, sir, there wasn't any laid off. But they got moved back to a different job.

Q. Did you lay off anybody in the trailer shop? A. Yes, sir.

Q. Who did you lay off? Do you remember? A. Laid off five people, Ralph Yates, Whitworth, Mr. Moudy, Mr. Clem and Mr. Millican.

Q. Did you have an interview, conversation with these men when you laid them off? A. Yes, sir.

Q. Where did that take place? A. In my office.

Q. How did you happen to get them in your office? A.

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I called them all in there to announce the layoff.

Q. What did you say to them at that time? A. I told them I regretted having to make the layoff, but it was an economical move, came from top management, and that it was system-wide. The other shops were affected, too. And if

we could ever be of any assistance in helping them secure other jobs, we'd be more than glad to.

Q. All right, sir.

Did any of the men say anything? Do you remember?

A. Yes, sir, there was quite a discussion. Mr. Clem spoke up and he was directing it to—I took it to be Mr. Moudy.

Mr. Avedon: What did he say rather than what he directed it to?

The Witness: He said, "I don't have a bump coming since I don't belong to the U.T.E. But you fellows do."

Q. (By Mr. Schoolfield) Did any of the other men say anything? A. Yes, sir, there was some conversation. And they asked me what was the deal on it. I said, "Any of you are eligible to bump for anything you have seniority and qualifications to hold."

Q. Did you tell them anything about helping them get jobs or anything like that? A. Yes, sir, I sure did.

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Q. What did you say? A. We would be more than happy to help any of them.

Q. Do you remember anything more to that conversation? A. I told them that they were at liberty to use their seniority rights, and to bump, that they had seniority and were qualified to fill.

And in Mr. Moudy's case, there was one job that he could hold, one job he had seniority to get, was on the service pumps. And he preferred not to take it.

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Q. (By Mr. Schoolfield) Was Mr. Millican present? A. Yes, sir.

Q. Mr. Millican? A. Yes, sir.

Q. Did he ask you how you were going to get those trailers fixed? A. No.

Q. Did you tell him you were going to drag them anyway? A. Definitely not.

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Q. Had you ever received a request from Mr. Clem to bump anywhere? A. No, sir.

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Q. (By Mr. Schoolfield) Tell us exactly how the layoff took place, Mr. Odom. A. The three youngest men off the service area, one was the youngest man in the Maintenance Department, five was out of the trailer shop and one was out of the Parts Department.

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Q. (By Mr. Schoolfield) Mr. Odom, after the layoff of April, 1962, did you send trailers out, sub-contract for repair or anything of that nature? A. Yes, sir, some.

Q. Did you send any more than you usually do? A. No, sir, I wouldn't say we did. Don't think so. We were sending some out prior to the layoff and we have sent some out since.

We were in a big modification program with Lufkin.

Q. What month was this? A. Well, it's still going on.

Q. Tell us about the modification program? A. Well, it started last December or January, and it is not completed yet.

Q. What kind of modification is being made? A. There was a construction failure in the fifth wheel section of the trailer, in the cross members, and they are modifying them.

Q. Lufkin is doing that? A. Yes, sir.

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Cross Examination

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Mr. Avedon: I am not making any contention on the basis of the layoff itself; that certain men—I mean I am not contending that the purpose of the layoff was discriminatory. I think that the selection of Clem to be included in this layoff was discriminatory.

Trial Examiner: All right.

That answers my question. On the ground that he was laid off out of order?

Mr. Avedon: Out of seniority, based on what this contract provided. And I want to establish that. I think—

Trial Examiner: All right.

Mr. Avedon:—I can do that.

Q. (By Mr. Avedon) Can you tell me what the—do you know a Mr. Everett? A. Yes, sir.

Q. What was his classification? A. Mechanic Third Class.

Q. How about a Mr. Hupy? A. He was a Mechanic's helper at the time of the layoff.

Q. How about a Mr. Martin Richards? A. He was a painter.

Q. How about Bill Millican? A. He was a trailer mechanic's helper.

Q. How about James Moudy? A. He was a trailer mechanic's helper.

Q. How about J. R. McIver? A. He is the tractor mechanic, Third Class.

Q. He is a mechanic third class? A. Tractor mechanic.

Q. Do you have a separate classification, tractor mechanic third class? A. Yes.

Q. You have a separate classification trailer mechanic third class? A. We do.

Q. Where does this class come from? A. On his ability, his skill. A man can be skilled in trailers and not be skilled in tractors.

Q. And vice versa.

Is there any provision in the Union contracts for a classification of Tractor Mechanics Third Class? A. Yes, sir, it is in there. It is Mechanic Third Class.

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Q. You didn't make any transfers at the time? A. I didn't make them. They were automatic when they cut back. They automatically move back.

Q. Would you explain what you mean by that? A. When we had the layoff, it left these jobs open, so the junior men had to move back into them. The junior men that were left had to go back into these other classifications on the service rack.

Q. Do I take it from that the people who had been working as mechanics moved back into the jobs as service men. Is that it? A. Mechanic's helpers.

Q. Mechanic's helpers moved back and did service work? A. Had been on the service rack, had moved into mechanic's helpers in the tractor shop. When the layoff came they had to move back.

Q. Who are these men that moved back? A. James Hupy was one. Bill Chapman was another one.

Q. James Hupy? A. Yes, sir.

Q. What was his job before the layoff? A. Mechanic's helper.

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Q. Did you offer these men the right to bump? A. Yes, sir, I sure did.

Q. You did? A. Yes.

Q. What did you say to these men? A. I told them they were at liberty to exercise their seniority to bump in any job they had seniority to get and qualifications to hold. I addressed it to the whole group.

Q. Who brought up the subject of bumping? A. Mr. Clem.

Q. You didn't bring it up yourself? A. No, sir.

Q. What was Clem's statement? A. He didn't have a bump coming because he did not belong to the U.T.E.

Q. Did you say anything when Mr. Clem made that statement? A. No, sir.

Q. Was Mr. Clem's statement a true statement? A. No, sir.

Q. You didn't bother correcting him? A. No, sir.

Trial Examiner: If Mr. Clem had asked to bump, would he be, in your interpretation, eligible for it?

The Witness: There was a couple of jobs there that he

1051

would have had a chance at qualifying for, yes.

Q. (By Mr. Avedon) What were those jobs? A. Third class mechanic in the tractor shop.

Q. Which would have been the same rate of pay, wouldn't it? A. That's right.

Q. And Mr. Clem made no request to bump to this job that would have been the same rate of pay? A. He did not and still hasn't.

Q. He still hasn't.

Have you spoken to Mr. Clem about his activities for the Teamsters Union in the shop? A. I never have called him in and talked to him. I never approached him on it, no. I did talk to him when he came to me.

Q. You never told him he was causing unrest in the shop because of his activities? A. I did tell him that.

Q. Did you do it on more than one occasion? A. No, sir.

Q. Just once you told him that? A. Yes.

Q. Was that related to the Moudy incident? A. Yes.

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Trial Examiner: These five men, you said Clem could have bumped in two places, would have been eligible to do so, but he did not ask?

The Witness: That's correct.

Trial Examiner: How about the other four of these five men?

The Witness: Yes, sir, there was a couple of jobs on the service rack. And I believe that the testimony here earlier, one of the men would have been qualified, but he chose not to take it. He didn't want it.

Trial Examiner: Qualified to do what?

The Witness: Bump the lower job.

Trial Examiner: That job would have been what?

The Witness: Service.

Q. (By Mr. Avedon) What was, or would have been the qualifications? A. The job he would have been bumping would have been service second class.

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Q. (By Mr. Schoofield) O-l-s-w-s-k-i? A. Yes.

Direct Examination

Mr. Avedon: And that is pronounced—

The Witness: Olsowski.

Q. (By Mr. Schoolfield) Eddie, who do you work for? A. Red Ball Motor Freight Lines.

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Q. Did you work the Saturday in between, which would be December 2nd? A. Yes, sir.

Q. Did you go in the Coffee Shop that day? A. Yes, sir.

Q. Did you see Mr. Clem in there? A. Yes, sir.

Q. Did you talk to Mr. Clem? A. No, sir.

Q. Did you say anything to him at all? A. No, sir.

Q. Did you point Mr. Clem out as that "No good so-and-so Teamster"?

Mr. Richards: Objection. Is he going to impeach his own witness now? The witness said he didn't speak to Mr. Clem.

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Q. (By Mr. Schoolfield) Did you say that that morning in the Coffee Shop at all, at any time that morning? A. Would you repeat that please?

Q. Did you say this in the Coffee Shop anytime that morning? A. No, sir.

Q. Did you say, "that damn bunch of Teamsters ought to be whipped or shot and whipped with a chain. They are telling a man how to run his company."? A. Definitely not.

Q. Did you run out and put a button on Mr. Clem's time card? A. No, sir.

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Q. And as of that date or that time they were going to get rid of Clem? A. No, sir.

Q. And that you had heard that over at the Labor Board Clem had caused a lot of trouble by adding two names to the list and that Clem was a damn liar? A. No, sir.

Q. You did not make that statement? A. No, sir. I didn't even know he was at the Labor Board.

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Mr. Schoolfield: Let me have those time cards a minute.

Q. (By Mr. Schoolfield) Mr. Olsowski, I am going to hand you the time cards of Mr. Clem and ask you if these time cards show any time on the road on a Saturday continuing to Monday—that would be a two day road call or more. A. No, sir, I find none.

Q. Eddie, did you ever tell Mr. William Clem there would be no more special runs for him? A. No, sir.

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DALE SCRUGGS

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined and testified as follows:

Direct Examination

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A. Yes, in conjunction with Mr. Charles E. Fisk. We held joint Safety Meetings.

Usually Mr. Fisk called the Safety Meetings and I participated in them.

Q. Did you handle the Transport Safety Reports at that time? A. Yes, sir.

Q. Do you handle them now? A. No, sir.

Q. When did you stop handling Transport Safety Reports? A. Oh, it was approximately two months after Mr. Barr came to work, I would say, with the company.

I continued to scan these reports and make notations on them. And then sometimes I just initialed them to show that I had read them. And it got to the point there where I couldn't even do that because of the other demands on my time.

So I would say approximately two months after Mr. Barr joined the company, I passed that function on to him.

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Q. When you were handling the Transport Safety Reports, how would you regard those Reports as between the company and the drivers? What did you expect from them? What did you look for? A. Usually expected not too much results for them. Usually indications to the drivers they were being checked on the highway, and we passed them on to them for their information, more or less.

If there were times when they exceeded any speed limits, or if there were any driving practices that were noticed, they were either written memoranda or called into the office and discusssd, these discrepancies discussed, with the drivers.

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Q. (By Mr. Schoolfield) Now Mr. Scruggs, did you allow any tolerance for over-the-road driving? A. Did I allow any tolerance?

Q. Yes, sir. A. To better understand what you mean, before they were issued a memorandum or was called into the office?

Q. Yes. A. Yes.

As a matter of fact, that is one of the reasons, Mr. Schoolfield, at one time we stayed right on top of those things and any discrepancy, anything above 45 miles per hour were called to their attention.

But the burden of work almost doubled within a period of six months' time, as far as our department was concerned, and as a consequence we began to more or less just let the patrol reports go through without any indication of notice, I mean without us having to make any notation on them as to whether they were exceeding the speed limits, or not. More or less there was only initials placed on there to show that it had been read.

Now as far as the tolerance was concerned, that was according, to answer your question, that could be construed possibly as a tolerance between 45 and any in excess of 45.

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Q. Mr. Scruggs, I am going to hand you Respondent's Exhibit No. 1, and ask you if you wrote that letter? A. Yes, sir, I did.

Q. Who is that letter directed to? A. Mr. H. J. Lewis.

Q. Now you read down through that letter, the body of the letter. Several instances are mentioned in there. Do you have personal knowledge of those instances? A. Yes, sir, I do.

Q. Can you explain them to us, one by one, please, sir? A. Yes, sir.

Q. The opening paragraph, is that in connection with Red Ball Trailer No. 423, which is loaded with oil destined to Greenville, Texas, and it was dropped on the Greenville lot under date of April 26, 1961. What prompted the interview and the writing of the letter? What was wrong with

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dropping the trailer on the lot? A. There is nothing wrong with it with the exception the dollies were not blocked up and the lot at Greenville is not paved. It is only a gravel lot.

Q. Was that called to your attention? A. Yes, sir. Just prior, well not just prior, the dates are here, I will have to refresh my memory by reading them as to the actual dates. The incident I am familiar with.

Under date of December 3, 1960, at Greenville, the same place, the trailer of Oil, same commodity, was dropped without blocks being placed under the dollies. This particular trailer broke through the crust of the lot and buried the dolly wheels in the ground up to the trailer. The nose of the trailer was sitting in the ground.

Q. What did that cause? What did the company have to do? A. We had to get wreckers from private concerns in Greenville to raise this trailer out of the hole in order to get a tractor under it.

Q. Who was responsible for that, in your judgment? A. Who was responsible for what?

Q. For the trailer breaking through. A. Oh, Lewis was, for his failure to put the blocks under the dollies.

Q. Did you talk to Mr. Lewis about it? A. I certainly

did. And also wrote him a letter, as I recall. I don't have it with me, and wrote him a letter and interviewed him

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personally.

Q. Did you talk with him when you wrote that letter there? A. Yes, I did.

Q. Did you remind him of this 1960 occurrence? A. Yes.

Q. What else did you remind him of? A. I reminded him of the fact that he, under date of February 11, I beg pardon, make that December 9, 1960, in Tyler, where he dropped a heavily loaded trailer on the black top at Tyler without putting the blocks under it. And incidentally, at Tyler there is a concrete strip provided for this, to drop the trailer dollies on so they won't break through. Now the rest of the lot is black topped. But at Tyler there is a concrete strip provided for that purpose.

Investigation showed there was room for at least five more trailers on this strip. But he did not drop on there. He dropped on the end of the strip on the black top and again broke through the surface of the paving and went to the nose. And again it required wreckers to raise it, and the additional cost to repair the holes in the ground where the dollies broke through the black top.

Q. Is it your testimony, Mr. Scruggs, as of that time that you wrote that letter there were three occasions in the last two years of dropping trailers, as far as Mr. Lewis is con-

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cerned, improperly? A. That is true.

Q. Is that your testimony? A. Yes, sir.

Q. Did you discuss that with Mr. Lewis at the time? A. Yes, sir.

Q. All right, sir.

Was there anything else discussed with him at that time?

A. Yes, sir, there sure was.

Q. What was that? A. At the time we had—I say at the

time, we—at the time I asked Lewis to come in we were receiving an unusual number of run-around claims from other drivers that were actually non-existent. The run-arounds did not exist. And in taking the time to run down the fact concerning each and every one of them, that consumed a considerable amount of time just to run down the facts, talk to the people that were at the places, also find out arrival times, departure times, and so forth.

When you'd find there was nothing there, just send the claim back to the driver and explain to him he had no run-around coming. And he'd say, "Mr. Lewis told me that I did have." That came up, oh, I'd say half a dozen times,

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where Mr. Lewis was promoting other drivers to make a claim for run-arounds that didn't exist.

Q. Now is there a seniority list for all drivers to see? A. Yes.

Q. But this— A. I mean seniority lists, in this particular—had nothing to do with it, Mr. Schoolfield. It was just a matter of dispatching.

Q. All right, sir.

Did you discuss that with Mr. Lewis? A. Yes, sir, I did.

Q. What did you tell him about it? A. I told him he wasn't as familiar with the contract, evidently, as most of the drivers he was trying to prompt. And I would appreciate him not taking that into his hands, to try to direct other drivers to make time claims.

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Q. (By Mr. Schoolfield) Now when did you next have occasion to talk with or correspond with, Mr. Lewis, if you recall? A. Let's see, the next time was the time he was called in to the office for—well, the time that he was terminated, as I recall. March 19 is the date of my letter, which should be the approximate date.

Q. Could you tell us how the events came about of that letter, please, sir? Tell us what you know about it? A.

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Yes, sir. The payroll department has instructions to bring to us in the Central Dispatch Office any trip reports which for any reason looks out of the ordinary to them. This is as far as pay claim or the log or any other possible discrepancy is concerned.

And on the trip report of March 11th and 12th, I believe it was the one, Mr. Lewis was dispatched to—let me digress a moment. Let me go back.

Q. Yes, sir. A. Mr. Lewis, at that time, was on a regular assigned run.

Q. All right, sir. A. From Shreveport to Sherman, Texas, via Clarksville, Bonham, into Sherman, working locals at each and every station.

And on this particular day he was dispatched on a schedule prior to his departure on his regularly assigned schedule. He was dispatched on a turn to Homer, Louisiana to pick up a load of paper routed to Strickland at Shreveport.

Q. Does that refresh your recollection at all? A. Yes, sir.

Q. Look that over good. Read it over good before you testify. A. This is the trip report in question, yes, sir.

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Q. All right.

How did that trip report— A. The payroll brought it to me because of the excess amount of tonnage indicated on this trip report, which is 62,060 pounds of freight.

Q. Now when you say excessive amounts of tonnage, what was the tonnage on there for? A. The tonnage, under the U.T.E. contract, the line drivers are paid by the hundred weight on the amount of freight they handle, either picking up or unloading, at any given point. And in this particular case, this 62,000 plus pounds looked a little out of line to the payroll clerk. And it was brought to my attention.

Q. You mean that is an excessive amount of tonnage?
 A. Well, in some cases, Mr. Schoolfield, a driver can handle that amount. But this particular one, plus the fact that the detention time was shown at Homer, is the principal reason that the payroll clerk brought it to our attention.

Now I noticed at the time that these tonnage figures were okayed by someone by the name, initials "B. H.", and I had no knowledge of any supervisors who had the name or the initials of B. H.

Q. All right, sir.

What did you do as a result of that? A. As a result I

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returned the trip report to Mr. Lewis and asked him to explain to me who okayed the tonnage, and to tell me whether or not he actually performed the service of loading the freight at Homer.

Q. All right, sir. Now will you look at Respondent's Exhibit No. 2, right there at the left, to the other side of you, and look at that and see if you recognize that, sir? Read it carefully, please. A. This right here?

Q. Isn't that directed to Mr. Lewis? A. Yes, yes, sir. Yes, sir, I wrote the letter.

Q. Now taking Respondent's No. 2 and General Counsel's No. 47, is Respondent's No. 2 in connection with General Counsel's 47? A. Yes, sir.

Q. And that was the letter you wrote that you have just testified about? A. Yes, sir.

Q. All right.

What next occurred in reference to this matter? A. The trip report was returned to me together with my original letter, and was written, and in Mr. Lewis' handwriting at the bottom of that letter, he had written, and I will try to quote from the best of my memory, "I did help loading this tonnage and it was okayed by Bill Hogan, because there was

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no one else there."

Now Bill Hogan is another line driver.

Q. All right, sir.

What did you do after you got the letter? A. After I got the letter I questioned this completely because to me, I knew that within reason, from past practices, that the tonnage on straight loads picked up at Homer, Louisiana, was usually performed by the people in the employ of Ludlow Paper Company.

Q. All right.

What did you do? Did you talk to any other official of the company? A. Yes, sir, I did. I talked about this to Mr. Charles D. Mathews, General Counsel of Red Ball Motor Freight, and discussed it with him as to the aspects of dishonesty which is indicated to me.

Q. Now what do you mean dishonesty? Why did it indicate dishonesty to you? A. It indicated dishonesty to me for the simple reason, was the claim was for more money than he was entitled to if he had been weighed under—that is the detention time at Homer rather than the tonnage.

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A. My next contact with Mr. Lewis was when I called him into the office and again, for the life of me, I can't give you the exact date. But there should be a letter there that would give me the date.

Q. All right, sir.

Let me hand you Respondent's Exhibit No. 56 for identification and ask you if you can tell me what this is?

(The document above-referred to was here marked Respondent's No. 56 for identification.)

A. Yes, sir.

Q. (By Mr. Schoolfield) What is that, sir? A. That is the letter of dismissal written to H. J. Lewis.

Q. Did you talk to Mr. Lewis in person around that time? A. Yes, sir, I am certain we did. I talked to him the day prior to this, which should have been March 28, 1962.

Q. Do you remember what you said to him and what he said to you? A. Yes, sir, I certainly do.

I asked him the question and showed him the letter on which he had written in his handwriting that he had actually performed this work. And also, a letter from Ludlow Paper Company that we obtained stating that Mr. Lewis did not perform this work.

Mr. Richards: Objection. Move to strike.

Trial Examiner: Is that letter in evidence?

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Q. (By Mr. Schoolfield) Did you show him a letter from Ludlow Paper Company? A. Yes.

Q. What did you say to him and what did he say to you?

Mr. Richards: Do I understand that portion of his answer is stricken?

Trial Examiner: As to what the letter said is stricken. That is as far as he got.

Mr. Schoolfield: That's all right with me.

The Witness: He claimed—

Q. (By Mr. Schoolfield) What did he say, if you can remember, and what you said. Could you, can you remember much of the conversation? A. Yes, sir, I asked him again, I asked him if he performed the work of actually picking up the paper and he said yes. And then I asked him, well, yes, sir, and then I asked him if he wanted to keep that as his final answer. And he said yes. And I told him for that reason then, knowing that he had actually not performed the work and the information that I had that he had not, that to me there was an act of dishonesty and we were terminating him for that reason.

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BEEMAN CARROLL

was called as a witness by and on behalf of the Employer,

and, having been first duly sworn, was examined and testified as follows:

Direct Examination

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Q. What position do you presently hold with Red Ball, Mr. Carroll? A. Vice President and Treasurer.

Q. Are you also a Director? A. Yes, sir.

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Q. At my request have you examined your records for the purpose of ascertaining the cost to Red Ball Motor Freight? And by cost I mean the amount paid on these personal injuries and damages to equipment during the period January 1, through October 31, 1961? A. Yes, sir, you did, and I have made a study of it.

Q. Have you made a similar study at my request as to the amount that the company has paid out on those claims and matters for the same period in 1962? A. Yes, sir.

Q. What was the figure?

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A. For 1961, \$78,061.52.

Q. And for the same period in 1962, what have the costs been? A. \$63,203.51.

Q. And you have calculated what the differences is? A. A saving of \$15,415.01 in 1962 over the same period in 1961.

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Cross Examination

Q. (By Mr. Avedon) Mr. Scruggs, with reference to what has been marked General Counsel's Exhibit 46, I take it you have seen that before? A. Yes, sir.

Q. When did that first come to your attention? A. Approximately March 14th or 15th.

Q. March 14 or 15? A. 1961, yes. Immediately after the trip report was turned in to the payroll department for payment.

Q. And it was sent up to you on the basis of the claim for 62,000 pounds was felt to be excessive? Was that it? A. That is 62,000 pounds.

Q. 62,000 pounds was excessive? A. That, plus the fact that there was time showed at Homer on the log, detention time, plus the fact that the okay, or the approval for that amount of tonnage was in someone else's—someone other than the payroll clerk recognized—

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Q. Now this trip ticket was brought to your attention by the payroll department. Is that right? A. That's correct.

Q. And after this was called to your attention, what was

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the next thing you did with respect to this? A. I sent it back to Mr. Lewis, asked for an explanation as to whether or not he actually performed the work. If you will note there is a question mark around the tonnage there.

Q. I noticed that.

And at that time did you make any inquiry from Ludlow or anyone else about the performing of the work? A. Not until I received it back.

Q. All right. A. And he stated that he did.

Q. Then this was sent to Shreveport. Is that right? A. Yes. That was his home terminal.

Q. And subsequently you received it back? A. That's correct.

Q. You also received back a letter, the same letter that you had sent to Mr. Lewis. Is that correct? A. That's correct.

Q. Now I notice on here that certain things have been crossed out and beside that, certain initials have been put in. Were those initials placed there—when were these initials placed there? A. They were placed there during the time it was sent back to Lewis and prior to the time it was sent back to me.

Q. Do you know who those initials are? A. Do I know

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whose they are—yes. Herman Price.

Q. Who is Herman Price? A. Dock foreman in Shreveport.

Q. The dock foreman would be the man who usually approves tonnage? A. Yes, if he knows the man handled it.

Q. And Mr. Price initialed these tonnages, including the 39,000 pounds, didn't he? A. Yes.

Q. And at the same time you received the letter, I take it, written on the bottom of your letter. Who was that letter written from? A. H. G. Lewis wrote the reply to me.

Q. There was nothing written on the bottom of that letter from Mr. Price? A. I didn't receive the letter from Mr. Price.

Q. On the bottom of the letter that you had sent to Mr. Lewis, there was something stated by Mr. Price? A. Yes, he had, he stated on there that Mr. Lewis had brought back to him and he had approved at Mr. Lewis' instigation. He told him he had dispatched him up there. Lewis told him he did the work, so he approved that. He wrote that in his handwriting below what Lewis had written on the letter.

Q. I take it then Mr. Price said he had dispatched Mr.

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Lewis and this was pursuant to his dispatch, this Homer pick up. Is that right? A. That's correct.

Q. On this pick up, on this driver's daily log, was there anything else that you questioned other than the Homer pick up? A. I don't recall. Can I see it again, please?

Was there anything else that I questioned?

Q. In other words,—yes. A. No. Yes, the initials, as to who had signed it, plus the fact, plus the Homer pick up.

Q. Right.

But when it came back it had these initials on it showing Mr. Price's initials? A. That's correct.

Q. Do you know, Mr. Scruggs, what would be the difference between what Mr. Lewis would receive on the basis of tonnage, as against the basis of peddle time, when he did not, if he did not load the material? A. Offhand—

Q. Did you figure that up? A. Yes, but that's been some time ago and I don't have the figures in front of me. I would have to compute it again right fast.

Mr. Mathews: Well, you can compute it?

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The Witness: Yes, sir, I can.

Q. (By Mr. Avedon) Could you compute it for me?

Trial Examiner: Off the record.

(A discussion was had off the record.)

Trial Examiner: On the record.

The Witness: I would say that, rough figuring there, which I think is correct, is \$1.88.

Q. (By Mr. Avedon) That is under the figures as you have computed them assuming that Mr. Lewis did not perform work, he would have been entitled to a dollar eighty-eight less than what he claimed on the basis of the tonnage. Is that correct? A. That's correct.

Q. I see. And when you received this form back, did you compute that from Shreveport? A. Did I compute it?

Q. Yes, did you make a computation of how much the tonnage was and how much the driver's flat hourly rate computation would have been? A. Well, yes, as a matter of fact, as I recall, I did that before I sent it back to him.

Q. I see.

Mr. Avedon: I have nothing further. I believe Mr. Richards has something he is going to develop along that line.

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Mr. Richards: I am not sure.

Q. (By Mr. Richards) Mr. Scruggs, let's see, referring again to the Exhibit G. C. 47, which was the trip ticket in question, is that right? A. Yes, sir.

Q. And Mr. Lewis was dispatched to Homer on March 11th. Is that right? A. March 11th, right.

Q. And came back and got loaded on March 11, didn't he? A. That's correct.

Q. I am going to hand you your calendar to refresh you. Is it not true March 11 was a Sunday?

Mr. Mathews: I will stipulate with you.

Q. (By Mr. Richards) That is not too uncommon, is it, for line drivers who are out on Sunday to get their tickets signed by other line drivers? A. Yes, it is.

Q. You never heard of it before? A. Yes, we have heard of it before?

May I answer your question by going back just a little bit further? This line driver, this is the first time I had actually found line drivers okaying other line driver's tickets. They had never called it to my attention, the payroll department hadn't.

Q. Never heard of it before in all your time? A. Line

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drivers had signed other line driver's in, but as far as okaying for payment, I wasn't aware of it.

Q. Well now, would Mr. Price work on Sunday? Do you know? A. Price did work on Sunday that day.

Q. You think he did? Do you know what hours he worked? A. I'd say approximately nine a.m. to around noon, which was prior to the time Lewis was dispatched.

Q. He'd be gone before he got back? A. He'd be gone,

yes. As a matter of fact, he was gone before he left, I would assume.

Mr. Avedon: Talk a little louder, will you?

The Witness: I would say he was gone before Lewis departed on this trip, I would assume.

Q. (By Mr. Richards) And would have not been there at the dock when Mr. Lewis got back from Homer? A. That's correct.

Q. (By Mr. Richards) Mr. Scruggs, do you have a line driver named George Joiner? A. Yes.

Q. Where does he operate from, do you know? A. Pres-

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ently he is operating from Houston to Paris, I believe.

Q. He is domiciled in Houston? A. Yes.

Q. I am going to hand you a driver's daily log, 3-6-62. That is one of your company logs, isn't it? A. Yes.

Q. Who was the driver on this trip? A. George Joiner.

Q. Now I notice here there is a place for destination agent to sign. Who is supposed to sign that? A. Any supervisor at destination.

Q. Who actually signed it? A. George Joiner.

Q. All right, sir.

I noticed there was some tonnage noted on this trip, was there not? A. It is evidenced by the trip report, yes.

Q. And who initialed it? A. Looks like G. J. on it.

Q. Who would that be? A. I would assume under the circumstances, George Joiner.

Q. This one was never called to your attention? A. No, sir, never was. Had it have been, I would of handled it in the same manner.

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Q. (By Mr. Richards) Mr. Scruggs, I am not sure. I may have cut you off earlier. Since the instance of Lewis having another line driver sign for tonnage over there in Shreve-

port, have other instances of this kind come to your attention? A. No. Well now, that is hard—immediately thereafter I issued a bulletin that that would come to a half immediately.

Q. I know. Is there something you started to say after that? A. Yes.

Q. That is what happened after that? A. That's correct. Because just to forego any future things like that from happening.

Q. Now I am sure we understand your testimony to be that you don't claim you discharged Lewis because he had some of the line drivers sign for tonnage reports, do you? A. No. That wasn't the reason for his discharge.

Q. That didn't figure in it? That was merely one of the things that brought the matter to your attention? A. That's correct.

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Direct Examination

Q. (By Mr. Schoolfield) Would you give your name and address for the record, please, sir? A. Jesse Hitt.

Q. H-i-t-t-? A. Yes.

Q. What is your address? A. 118 West 11th, Irving, Texas.

Q. 118 West 11th, Irving, Texas.

By whom are you employed, Mr. Hitt? A. Red Ball Motor Freight Line.

Q. Where? What is your job with Red Ball? A. I am in the unloading foreman.

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Q. Do you know Mr. Joe Shamblin? A. Yes, sir.

Q. Did you know him when he was working for Red Ball? A. Yes, sir.

Q. Do you ever recall a conversation with Mr. Shamblin in reference to failure to pick up freight? A. No, sir.

Q. Did you ever tell Mr. Shamblin sometime around the middle of 1961 that usually the company will allow a man to go back the next morning and pick up his merchandise?
A. No, sir.

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Q. And do I understand correctly that a Form 10, as Mr. Mathews indicated a while ago, is part and parcel of the O S and D Report in the sense that a Form 10 may result in an O S and D Report? A. Yes, sir.

Q. So that a Form 10 is issued by the dock, goes to the customer service department. Is that correct? A. Goes to the agent.

Q. Or the agent, rather, and this may result in the issuance of an O S and D? A. Well, I don't know what happens to it after it gets up in there. All I know, I am supposed to write a Form 10 up on anything and hand it to the agent, and he handles it from there on.

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1123

Direct Examination

Q. (By Mr. Schoolfield) Give your name and address for the record, please, sir? A. Alvie G. Simpson.

Mr. Avedon: What was that name?

The Witness: A-l-v-i-e.

Q. (By Mr. Schoolfield) Alvie—A. G.

Q. Simpson, S-i-m-p-s-o-n.

What is your address, Please? A. 1826 Orlean.

Q. O-r-l-e-a-n, Houston, Texas? A. Yes, sir.

Q. And Houston, Texas.

Who do you work for, Mr. Simpson? A. Red Ball Motor Freight.

Q. What is your job with Red Ball? A. I am Assistant Terminal Manager.

Q. Where? A. Houston.

1124

Q. All right sir.

Now, Mr. Simpson, I am going to hand you three instruments marked as Respondent's Exhibits 52, 53 and 54 for identification and ask you, sir, if you can tell me what each one is. What is No. 52 there that you have? A. Well, this is a memorandum that I gave Mr. Peoples on speeding on our lot there in Houston.

Q. Did you have an interview with Mr. Peoples in regard to that? A. Yes, sir.

Q. Did you hand him that memoranda? A. Yes, sir.

Q. All right, sir.

Will you tell me what 53 is? A. Same thing only it's Mr. Luther Willingham, on speeding on our lot.

Q. Did you have an interview with Mr. Willingham? A. Yes, sir.

Q. Fine, sir.

Now what is 54? A. Well, it's the same type of memorandum I gave Mr. Willingham.

Q. Now is 54 the same as—now there is two Willinghams, is there not? A. There is a W. T. and a Luther Willingham? 54 is W. T., and 53 is Luther? A. That's right.

1125

Q. They are different individuals? A. That's right, sir.

Q. Then is it your testimony that on about the date of that memoranda you interviewed three employees, and that is the substance of your interview? A. Yes, sir.

* * * * *

Q. (By Mr. Schoolfield) Now, Mr. Simpson, I will return to you Respondent's Exhibit No. 54, which is a memoranda

1126

to the file of Mr. W. T. Willingham, and ask you if you recall the time you talked with Mr. Willingham about that memoranda? A. Yes.

Q. Do you remember what you said to him and what he said to you, sir? A. Not word for word, but pretty close, sir.

Q. All right, sir. Would you tell us? A. I called him in the office and told him that we had radar set up on the lot, and he was clocked driving too fast on the lot.

Q. Uh huh. A. And I told him we had been having too many accidents on the lot, and he'd have to slow down. I told him under the circumstances that we had talked to him before, and I was going to have to give him a letter on it. And in the future he would have to drive the speed limit, which he could see when he came in on the lot is 10 miles an hour—big sign on the gate as he comes in the lot.

Q. What did he say to you, sir? A. Well, he admitted he was driving too fast. Actually that was about all he said.

He wasn't, really wasn't too interested in it.

Q. All right, sir.

Did you tell Mr. Willingham that 85 percent of the drivers were speeding on the lot? A. No, sir.

1127

Q. You did not? A. No, sir.

• • • • •

Q. Did you have a conversation with Mr. Willingham around that time in reference to this election, that you recall? A. The only time I ever talked to Mr. Willingham about the election, I was coming across the dock.

Q. All right, sir. Tell us about it. A. And he was—

Mr. Avedon: Can you establish when this was, please?

The Witness: Sir?

Mr. Avedon: Can you tell us when it was?

The Witness: Well, it was prior to the election. The actual date I don't know.

Q. (By Mr. Schoolfield) Can you estimate how far prior to the actual election? A. Well, roughly I'd say about a

week, maybe 10 days.

Q. All right. Tell us what you said to him and what he said to you, if you can remember? A. Well, actually when I walked up to him, he was standing on the dock. I met him on the dock. I spoke to him like I do all the boys, asked him how he was getting along. He said, "Not too good."

I asked him, "What is the matter?" He said he was a little tired, I believe. Then he asked me what I thought about the union.

So I said, "Bill, you know how I feel about the union. There is no use for me to say any more."

He said, "Well, there is a lot of them signed up."

And I said, "Well, Bill, that is all right. That is their business, and it is your business, whatever you all do is you all's business." And that was about all that was said.

Q. All right, sir.

Did you mention to him a campaign in 1948 at that time?

A. No, sir.

Q. Have you ever talked to him about a campaign in 1948? A. No, sir.

Q. Did you tell him he'd be sorry in the long run about the union? A. No, sir.

Q. Did you tell him that at Red Ball they don't have to know the reason to run a man off, they can make one up?

A. No, sir, absolutely not. No, sir.

• • • • •

CHARLES E. FISK

• • • • •

Direct Examination

• • • • •

Q. What is your job with Red Ball? A. Vice President of Operations.

Q. Now in the course of your job during the past two years, have you had occasion to handle personnel matters also? A. Yes, I have.

Q. Now did you ever hear of a Mr. William Clem, Mr. Fisk? A. Yes, I have.

Q. In what capacity have you heard of Mr. Clem? A. Mr. Odom talked to me about transferring Mr. Clem to Denver. Wanted to know if it would meet with my approval. I knew we were having problems in our Denver shop. I told him we would work out the details of the transfer. It would meet with my approval.

Q. Fine, sir. Did you ever have a conference in the presence of Mr. Cotten with reference to Mr. Clem? A. No, sir, I didn't

Q. I am speaking of Mr. Cotten who is in the trailer shop. A. Yes, sir, I know him.

Q. Is that all you know of Mr. William Clem? A. Well, I knew he was an employee in our Dallas trailer shop.

Q. Well, did you know Mr. Clem or see Mr. Clem at any preelection conference? A. Yes, sir, I did in Fort Worth.

Q. Yes. Do you know a Mr. Bailey of Local 775, the Teamsters, in Denver? A. Yes, sir, I know him to the extent that I, in behalf of Red Ball Motor Freight, I negotiated a contract with Mr. Herb Bailey, who is the Secretary and Treasurer of Local 775 in Denver.

The negotiations took place in October, 1959.

Q. Have you had dealings with Mr. Bailey since then? A. Yes, sir.

Q. Have you had recent dealings with Mr. Bailey? A. Oh, within the last six or eight months, yes, sir.

Q. All right, sir. Fine.

Will you explain, if you know, the company policy on suspensions in case of accidents, please, sir? A. Yes sir, I believe I know. Our policy is that whenever we have a fleet accident, and there is an indication that there is a carelessness on the part of the Red Ball driver, he is immediately suspended until an investigation can be made of the accident.

Q. Now is this investigation made as quickly as possible?

A. As soon as possible, yes, sir.

Q. Now what would be the type of accident where negligence may be indicated? A. Well, as an indication we have one right now in Slidell, Louisiana. We had an accident last Saturday morning. One of our drivers operating out

1133

of New Orleans hit the—rear end collision, hit an automobile. He was immediately suspended. We are now investigating that accident.

Q. It is in Louisiana? A. Slidell, Louisiana.

Q. That would be under the Teamsters contract? A. Yes.

Q. How about backing accidents, are the prima facie negligence accidents? A. Yes, they are.

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1134

Q. (By Mr. Schoolfield) Mr. Fisk, can you explain the company policy as far as resignations of employees are concerned? A. Yes, sir. Our policy is this: Instructions are out to supervisors that any employee indicating a desire, wanting to resign, instructions are not to attempt to talk him out of it but accept his resignation immediately. The reason for this, if a man wants to indicate he wants to resign, he is not happy with his work, and necessarily if he is not happy with his work, certainly he can't perform his duties properly.

• • • • •

Q. Is it a policy to offer a man the opportunity to resign before discharge?

Mr. Richards: I object.

Trial Examiner: He may answer.

The Witness: In some cases, yes.

Q. (By Mr. Schoolfield) What is the reason for that? A. We give a man an opportunity to resign so it will be shown on his record in the event of future employment.

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1135

Q. (By Mr. Schoolfield) Fine. Mr. Fisk, have you had an

1136

opportunity to read the record of the testimony of Mr. Joe Shamblin? A. I have.

Q. Now I am going to ask you this question with reference to this record, or what you read. Are the statements made by Mr. Shamblin, the testimony in this cause regarding meetings with you and what you said and what Mr. Shamblin said in those meetings back to you, substantially correct? A. They are.

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1137

Cross Examination

Q. (By Mr. Avedon) Mr. Fisk, you were asked about a meeting with Clem in Fort Worth. Do you recall that, at the Board's pre-election conference? A. Yes, sir.

Q. Do you recall an incident with respect to Clem stating that two employees had been left off the voting list? A.

1138

Yes, sir.

Q. Could you tell us what happened? A. I simply asked him where he got his information from. He said the time cards and the time rack at the shop.

Q. And subsequently were two men added? A. Yes, sir, they were. I immediately called Dallas to verify that the two men were on the payroll.

* * * * *

GENERAL COUNSEL'S EXHIBITS

EXHIBIT NO. GC-2

RED BALL MOTOR FREIGHT, INC.
GENERAL OFFICES

3177 Irving Blvd.—P. O. Box 10837—Dallas, Texas

October 31, 1961

Dear Employee and Family:

As you all know, the Teamsters Union is attempting to raid your membership in the Union of Transportation Employees and have filed for an election. The National Labor Relations Board will likely set the date of the election for November 16, 1961, and you will get full information regarding this election.

This is just another attempt on the part of the Teamsters to destroy your union and the good relationship that has existed between this company and the UTE over the past many years. Certainly, we cannot believe that our employees would vote for a Teamster contract that would force us to cut your work week. Red Ball wants you to enjoy a good pay check and to have the opportunity to work the hours you desire. You have this under the UTE contract, but Red Ball cannot give you this privilege if it is forced to pay time and one half for all work over forty hours as provided in the Teamster contract. All the Teamsters want is more dues paying members and more money for the Teamster bosses rather than what is good for you and your family as an individual.

Red Ball knows this because we inherited a Teamster contract in Amarillo where the average pay per man is \$150.00 less per month than your pay under the UTE contract.

Under the UTE contract, you line drivers, as well as all other UTE members, have system-wide seniority and a larger guarantee as to pay than you would receive under existing Teamster contracts.

I believe the labor peace you have had with the Union of Transportation Employees is best for you and your family. Think it over and talk it over with your fellow employees and your family.

Sincerely yours,
H. E. English
Chairman of the Board

EXHIBIT NO. GC-3

RED BALL MOTOR FREIGHT, INC.
GENERAL OFFICES
3177 Irving Blvd.—P. O. Box 10837—Dallas, Texas

November 2, 1961

Dear Employees and Family:

We have just written each of you to keep you informed about the attempt of the Teamster Union to raid the members of the Union of Transportation Employees.

On Monday, October 30, Red Ball met at the National Labor Relations Board with the U.T.E. and the Teamsters Union and offered to have an election November 16, which was the earliest date that could have been arranged for this. The U.T.E. agreed; however, the Teamsters refused. Red Ball met again on Wednesday, November 1, and again offered to go to a secret ballot election. Again, the U.T.E. agreed, and again, the Teamsters refused.

Even though the Teamsters started all of this, they are now stalling for more time in order to attempt to get your support. Why? The real reason is that they do not represent the Red Ball employees. Actually, they are afraid to agree to a free vote because they know you have a better job and better take-home pay than they could ever hope to get for you.

The U.T.E. was willing to let you vote at any time and certainly Red Ball will do the same. Why aren't the Teamsters? They originally requested the election but have backed down. We suggest you think this over very seriously and we will keep you advised on future developments.

Sincerely yours,
Henry E. English
Chairman of the Board

EXHIBIT NO. GC-4

RED BALL MOTOR FREIGHT, INC.
GENERAL OFFICES

3177 Irving Blvd.—P. O. Box 10837—Dallas, Texas

November 14, 1961

Dear Employee and Family:

This is to advise that the National Labor Relations Board has set the coming union election for November 30th and December 1st, on Red Ball docks. Everyone will have an opportunity to vote, and everyone should vote, because a non-voter merely helps the other side. The Teamsters finally agreed to an election after three meetings in which Red Ball and U.T.E. offered to go to an election at any time. This all happened after my last letter to you stating that the Teamsters had refused to go to an election. I guess

they decided it was time to agree to do something, because the government threatened to dismiss the petition if the Teamsters would not agree. The Teamsters simply do not have the support of the Red Ball people.

Certain misinformation put out by the Teamsters has come to my attention. First, the Teamsters claim Red Ball has fired 341 people in Texas in the last two years. As a fact, Red Ball's entire turnover rate was 40 people, or 6.3% of the total working force. Why do the Teamsters lie to you? In our western operation, being the old DAE system, which is under Teamster contract, the turnover since 1957 has been 21.5%. Does this indicate a Teamster contract is any better than a U.T.E. contract? If you doubt this, check with your terminal manager. He will have the facts.

The Teamsters talk of our commission agent stations, but do not tell of the many, many terminals that have been closed because of the Teamsters contract by other Teamster representative lines. Keep the facts in mind: When a terminal is closed, under the Teamsters contract, the employee is completely out of work with no seniority privileges to transfer to other terminals, as you now have under the U.T.E. contract.

You know Hitler said that, if you tell lies big enough and often enough, someone will believe them. No doubt this is what the Teamsters are trying to do. I deeply resent the false statements against Red Ball and the implications that Red Ball mistreats its people. I believe each of you know better than this, and have faith in your Company.

It is a source of sorrow to me that you are being subjected to this type of union campaign, and it is for this reason, as well as others, that I prefer the U.T.E. to the Teamsters union. I don't want you to have to pay Teamster dues, initiation fees, and unnecessary assessments. The Teamsters are out to destroy Red Ball and its good relationship

with the Union of Transportation Employees and you. Do you want to be a part of this?

Sincerely,
H. E. English
Chairman of the Board

EXHIBIT NO. GC-5

RED BALL MOTOR FREIGHT, INC.
GENERAL OFFICES

3177 Irving Blvd.—P. O. Box 10837—Dallas, Texas

November 22, 1961

Dear Employee and Family:

I believe this is my most important letter to you on the coming union election. In previous letters I have talked of the difference between Teamsters and UTE contracts and relationships. Now, I want to bring the difference in leadership to your attention.

Recently, Red Ball experienced a six day strike in Denver, Colorado, which threw 150 people out of work due to irresponsible Teamsters leadership. This was a bitter thing to me, because I knew, as you know, that most of Red Ball's employees in that area wanted to work but were afraid to do so. I hope such a situation never occurs in our Texas, Arkansas, Louisiana or New Mexico operation. It has never occurred by order of the UTE in all the years of good relationships.

I call your attention to the numerous letters, you have received from the Teamsters. We all know that the statements made by the Teamsters in these letters are false, and so do they, as not a single letter bears the signature of a Teamsters official or employee. That is proof that you do not know who you are dealing with in the Teamsters Union.

It is always the family who pays when the union leaders and bosses decide to push a company around. It is the individual employee who loses. I hope the UTE will be given a large vote of support.

Sincerely,
Henry E. English
O. B. English

EXHIBIT NO. GC-6

RED BALL MOTOR FREIGHT, INC.
GENERAL OFFICES

3177 Irving Blvd.—P. O. Box 10837—Dallas, Texas

November 27, 1961

Dear Employee and Family,

This is our last word to you before the election beginning Thursday, November 30. We again urge everyone to vote. We feel certain you have all seen the sample ballot and notice of election of your bulletin boards. Place an "X" in the box of your choice. Do not place any other mark on the ballot. Do not sign the ballot or you will void it.

It is up to you whether your independent union, the Union of Transportation Employees continues in existence or whether your company must negotiate with the Teamsters Union. Your union is what you make it. Ask yourself what you as an individual could do to clean up the Teamsters Union. All of this is up to you because we feel that now everyone has the facts before them. We hope you have discussed your vote with your family and you have the benefit of your family's advice.

Red Ball wants to thank each of you for your consideration and for the opportunity to talk with you about this most important subject. In our judgment, your independence

depends on your vote in this election. We prefer the Union of Transportation Employees because we know of past good relationships with this independent union. We hope you feel the same way.

Sincerely,
Henry E. English
O. B. English

EXHIBIT NO. GC-10

HOW TO USE THE INSIDE TABLE

If your take-home pay is \$51 a week and you strike for 5¢ an hour, the table shows it will take you 25 weeks to get back your loss. If the strike is settled in one week and you get the 5¢ an hour increase.

If the strike lasts longer than one week, simply multiply the number of weeks shown on the table by the number of weeks the strike lasts to find how long it will take to recover your loss.

Example: A four week strike under the above circumstances will take 25 weeks \times 4 = 1 year and 48 weeks to recover loss.

NATIONAL LABOR RELATIONS BOARD

OFFICIAL EXHIBIT NO. 10

Department _____

to the order of Ref. Bureau

on Page 1

What ⁶⁰⁻¹⁰
would a
strike
cost
YOU?

Everyone **LOSES** a strike!

- **EMPLOYEES** lose pay checks and it takes a long time to recover the loss.
- The **COMMUNITY** and its merchants and stores, lose the benefit of payroll dollars.
- The **COMPANY** loses production, sales and often customers. Money which might be available for more jobs and expansion is lost.

UNIONS claim a strike is their strongest economic weapon, but some **UNION LEADERS** use strike threats and strikes with complete disregard for how it will affect employees.

UNION LEADERS LOSE NO PAYCHECKS during a strike.

These same **UNION LEADERS** generally "call the show" on when to strike and for how long.

Before **YOU** go on strike or vote to strike,
think about **WHAT IT WILL COST YOU!**

For **EVERY** week you strike... in the hope of getting
a hourly increase of ————

(and you wouldn't be getting the increase)

IT WILL TAKE YOU THIS LONG TO GET BACK WHAT YOU LOST

if your present take-home pay is	You will lose	0¢	1¢	3¢	5¢	10¢
\$40 - 41	\$41	NEVER	1 year 50 weeks	34 weeks	20 weeks	10 weeks
\$50 - 51	\$51	NEVER	2 years 23 weeks	42 weeks	25 weeks	12 weeks
\$60 - 61	\$61	NEVER	2 years 48 weeks	50 weeks	30 weeks	15 weeks
\$70 - 71	\$71	NEVER	3 years 21 weeks	7 weeks	35 weeks	17 weeks
\$80 - 81	\$81	NEVER	3 years 46 weeks	15 weeks	40 weeks	20 weeks
\$90 - 91	\$91	NEVER	4 years 19 weeks	23 weeks	45 weeks	22 weeks
\$100 - 101	\$101	NEVER	4 years 44 weeks	32 weeks	51 weeks	26 weeks

If a strike lasts several weeks, just multiply by number of weeks. **THINK HARD!!!**

BEST COPY

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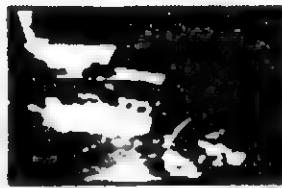
EXHIBIT NO. GC-11

... AND ONE HEAVY LOADED LOCAL IN PHILADELPHIA

... DOBLES AROUND ITTFA, ALL WITH POLICE RECORDS ...

The exhibit consists of a grid of 20 mugshot photographs of men, arranged in 4 rows and 5 columns. Each mugshot is accompanied by a small, illegible text label. The men are shown from the chest up, facing forward. The background of the mugshots is dark. The text labels are positioned below each mugshot.

EXHIBIT NO. GC-12



TRAIL OF TERROR
MARKED BY TEARS



BEST COPY

from the original

EXHIBIT NO. GC-13



DARK AND STRANGE DOINGS IN TEAMSTERS

The Teamsters Union, the largest labor organization in the United States, has been the center of a series of strange and dark events in recent years. The union's leadership has been accused of various crimes, including racketeering and corruption. The events have led to a loss of trust among the union's members and the public. The Teamsters Union has been the subject of numerous investigations and lawsuits. The union's leadership has been accused of various crimes, including racketeering and corruption. The events have led to a loss of trust among the union's members and the public. The Teamsters Union has been the subject of numerous investigations and lawsuits.



EXHIBIT NO. GC-14

THINK IT OVER

Listed below are some facts and figures with which you should already be familiar but to which you may not have given serious consideration. The rates and guarantees quoted are taken direct from the two contracts. Since the Teamsters contract covers only three (3) categories, the comparisons are made only on these three.

Classification	Teamsters	U.T.E.
CHECKERS		
Weekly Guarantee (Hours)	40	43
Hourly Rate	2.79	2.85
Weekly Earnings on Guarantee	111.60	122.55
Difference (more under UTE) Per Week		10.95
Difference (more under UTE) Per Year		569.40
DRIVERS		
Weekly Guarantee (Hours)	40	43
Hourly Rate	2.79	2.80
Weekly Earnings on Guarantee	111.60	120.40
Difference (more under UTE) Per Week		8.80
Difference (more under UTE) Per Year		457.60
DOCK WORKERS		
Weekly Guarantee (Hours)	40	43
Hourly Rate	2.66	2.75
Weekly Earnings on Guarantee	106.40	118.25
Difference (more under UTE) Per Week		11.85
Difference (more under UTE) Per Year		616.20

EXHIBIT NO. GC-22

"Dear Brother Employees and Family:

"I have just received a letter from Mr. Henry E. English and O. B. English. I would like to give you my answer and interpretation to this letter.

It puzzles me that the company ask us to vote for U.T.E. and the explains how wonderful the company relations have always been with us, its employees. The company is well aware of the difference between U.T.E. contract and a Teamster contract. They know that under a Teamster contract that the line drivers would receive higher mileage rates, more break-down pay, more layover pay and more delayed time; and all other employees would receive time and one-half after 8 hours in any one day, time and one-half for sixth day and double time for seventh day, all employees would receive a health and welfare plan and a pension plan paid for in full by the company—plus job security. This pension plan would pay us \$200 per month at the age of 60.

The reason for the strike in Denver was not irresponsible Teamster leadership. The employees in Denver struck to force Red Ball to pay a just claim to Mr. J. P. Hogan, in the amount of \$114.66. Under U.T.E. we could not even have gotten the grievance heard, but under their contract they were able to strike to enforce the decision of the Grievance committee. I am sure the company's reason in this case was to use this as propaganda at this election time.

The employees at Amarillo voted 5 years ago to go into the Teamsters Union, they told me they would strike the company to enforce a decision from the Grievance Committee.

Please let me impress on you how important it is to vote Teamster. However, if you feel that you cannot vote Teamster, vote no-union. The company knows that if they can keep a contract with U.T.E. they are in a position to keep out any other bona fide union. Mr. English only writes

all of these letters to you asking you to vote for U.T.E. because he knows that a Teamster contract will give you a more just share of the monies Red Ball makes each year.

I am writing this letter to you as an old time Red Ball employee. I have seen many employees discharged and no grievance was ever heard. I am sure that this could not happen under a Teamsters' contract. We all know that the reason we get the wages we do is to keep the Teamsters out. I am sure that Mr. English would be for the Teamsters if it did not mean more money, more fringe benefits—plus job security for all employees. Please vote for Teamsters or no union. Quit wasting your \$5.00 per month."

THE ABOVE IS A REPRODUCTION OF A LETTER FROM HALL C. NICHOLS, AN EMPLOYEE OF RED BALL MOTOR FREIGHT LINES.

EXHIBIT NO. GC-23

RED BALL MOTOR FREIGHT, INC.
GENERAL OFFICES

3177 Irving Blvd.—P. O. Box 10837—Dallas, Texas

Houston, Texas
May 9, 1962

Mr. Hall Nichols
10940 Royal Pine Street
Houston 16, Texas

Dear Mr. Nicholas:

On May 9, 1962, within the city limits of Houston, Texas, you drove exceeding the legal speed limit. You were driving Trailer 2077 and pulling Tractor PA 9240. We cannot tolerate nor will we condone this type of driving.

Should you be in violation again, appropriate disciplinary action will be taken.

Yours very truly,
John W. Barr,
Safety Director

JWB/mw
cc: Otho Foster—Houston
Dale Scruggs—Dallas
UTE—E. L. Tadlock
Personnel File

EXHIBIT NO. GC-24

RED BALL MOTOR FREIGHT, INC.
GENERAL OFFICES
3177 Irving Blvd.—P. O. Box 10837—Dallas, Texas

Houston, Texas
May 9, 1962

Mr. Hall Nichols
10940 Royal Pine Street
Houston 16, Texas

Dear Mr. Nicholas:

On the morning of May 9, 1962, you did fail to follow instructions as outlined in the Safety Meeting on May 7. These instructions are also in the Company rules and regulations pertaining to Line Drivers.

Should you be in violation again appropriate disciplinary action will be taken.

Yours very truly,
John W. Barr,
Safety Director

JWB/mw
cc: Otho Foster—Houston
Dale Scruggs—Dallas
UTE—E. L. Tadlock
Personnel File

EXHIBIT NO. GC-25

RED BALL MOTOR FREIGHT, INC.
GENERAL OFFICES
3177 Irving Blvd.—P. O. Box 10837—Dallas, Texas

May 15, 1962

Mr. Hall Nichols
10940 Royal Pine Street
Houston 16, Texas

Dear Mr. Nichols:

On May 9, 1962, within the city limits of Houston, Texas, you drove tractor No. 2071, while pulling trailer PA-9240, in excess of the legal speed limit.

We cannot tolerate, nor will we condone, this type of driving. Should you be in violation again, appropriate disciplinary action will be taken.

Very truly yours,
John W. Barr
Safety Director

JWB:bh

cc: Mr. Otho Foster, Houston
Mr. Dale Scruggs, Dallas
U.T.E.—Mr. E. L. Tadlock
Personnel File

NOTE: This supersedes letter sent to you on May 9, 1962, which had two typographical errors.

EXHIBIT NO. GC-35

April 5, 1962
Dallas, Texas

Memo to Elton E. Cathey's file:

Upon Mr. Cathey's return to Dallas he was asked to come into my office to discuss the accident which occurred approximately 10 miles south of El Dorado, Arkansas on April 1, 1962.

In discussing the matter with Mr. Cathey I asked him if he remembered a bulletin, which was issued to all line drivers, in May of 1961 in regard to checking of their wheels and tires every 50 to 75 miles. He stated he did remember the bulletin and further stated that he was just wrong in failing to check his equipment.

He had driven his unit from Dallas to Shreveport, where he changed trailers, and then proceeded on to the point of the accident, whereby one of the wheels came off the unit, striking a parked car that was having tire difficulty, causing considerable damage to the parked unit. By the Grace of God the passengers in this unit were not injured.

Upon examination of the wheel the lug holes in the wheel were badly chewed up, indicating that the tractor had been driven on this wheel some distance with the lug bolts loose.

As a result of our conversation in regard to this accident, and Mr. Cathey's admission that he did disregard instructions, in that he did fail to check his tires and wheels, which resulted in a preventable accident, Mr. Cathey was advised that his services were terminated.

EXHIBIT NO. GC-36

RED BALL MOTOR FREIGHT, INC.
GENERAL OFFICES

3177 Irving Blvd.—P. O. Box 10837—Dallas, Texas

April 5, 1962

CERTIFIED MAIL

Mr. Elton E. Cathey
San Jacinto Street
Rockwall, Texas

Dear Mr. Cathey:

Your services with Red Ball Motor Freight, Inc. are hereby terminated, effective April 5, 1962.

The reason for this termination is your failure to follow

instructions, which resulted in damage and abuse to our equipment and damages to property of others.

Very truly yours,

RED BALL MOTOR FREIGHT, INC.

John W. Barr

Personnel—Safety

JWB:eb

cc—U.T.E.

Dale Scruggs

Personnel file

EXHIBIT NO. GC-38

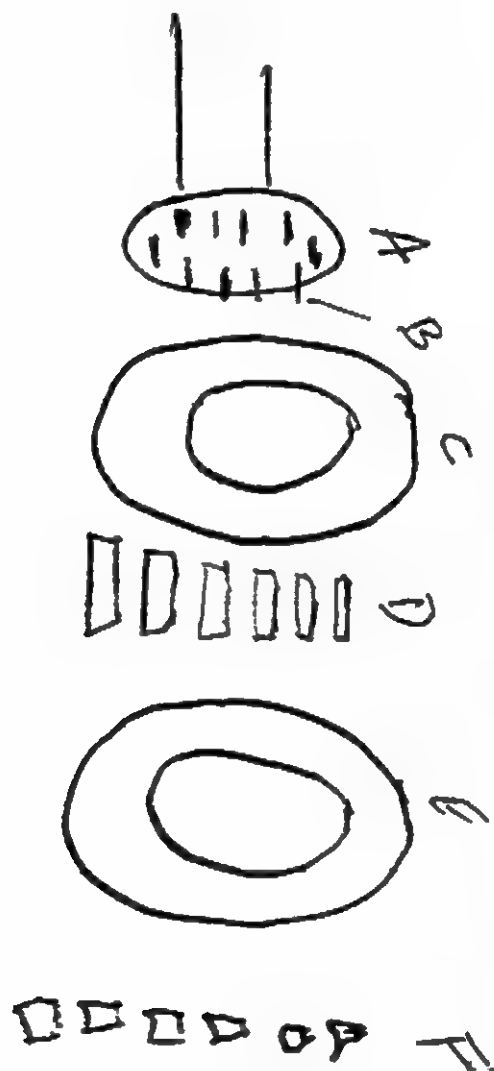


EXHIBIT NO. GC-41

INTERVIEW MEMORANDUM
RED BALL MOTOR FREIGHT, Inc.

Pers 129

NAME: M. J. Lewis
STATION: Shreveport, Louisiana
JOB: Over-The-Road Driver
DATE: January 15, 1962

For the purpose of assisting me to perform my duties more satisfactorily, the following matters have been fully discussed with me: My duties as a line driver—specifically my responsibility is moving freight from local stops or warehouses on my specific run by schedule. It was pointed out that any future poor judgement in failing to move local freight of any poor judgement reflecting negligence in performing my duties would be followed by my immediate discharge from the service of the company. Specific reference is made to my trip of 1/11/62 through Paris, Texas where I failed to use judgement in moving freight from Paris to Sherman, Texas.

INTERVIEWED BY:

SIGNATURE OF EMPLOYEE:

Original to Personnel Dept., Gen. Office, Dallas, Texas.
Copy to be placed in Agency Personnel File
Copy to Union of Transportation Employees
Copy to Employee interviewed

EXHIBIT NO. GC-48

Safety Bulletin 61-1

May 15, 1961

To: All Line Drivers
Subject: Tire Fires

As we all know, tire fires are caused by under inflated tires which have been run while under inflated or flat. In

order to prevent tire fires this summer, we are asking for the cooperation of all of our line drivers in checking their tires prior to departure and every 50 to 75 miles while enroute between terminals.

If a tire should catch fire while enroute, the driver should continue to drive at speed of 20 to 25 MPH until he gets to a water supply. Rubber burns with intense heat and will reignite unless it is thoroughly cooled. Pour water on a burning or hot tire until it has ceased to burn and you can place your hand on it. As an added precaution, remove the tire from the unit.

If you discover a hot tire while enroute and you cannot remove it, try to cool it off with water if it is available. Under no circumstances leave a unit unattended with a hot tire on it.

A word of caution about fighting any type of fire, always place your back to the wind. In some cases the fumes from a fire may be very toxic. Never use a "Carbon Tet" type fire extinguisher in an unventilated area.

If you have a fire, MAKE UP YOUR MIND quickly on how you are going to get it under control, then take action. It will save you time and possibly your unit in the long run.

If you use any portion of your extinguisher, have it replaced or recharged at the end of your run.

"SAFETY IN THE SIXTIES"

EXHIBIT NO. GC-57

7628 Maxwell
Dallas, Texas

Union of Transportation Employees
1413 East 15th Street
Plano, Texas

Attention: R. S. Craig

Dear Sir:

Since my election as Treasurer of the U.T.E. I have not

had available the books and records containing the financial accounts of the organization. I note in Article X, Section 4 that the duties of the treasurer include "to maintain or to have maintained all records and books as prescribed by the Board of Directors in accordance with applicable laws pertaining thereto; to prepare and furnish the President a monthly financial statement showing thereon cash at beginning of the month; an accounting of all receipts, properly account for all disbursements, together with balance of cash on hand at the end of the month..."

I intend either to diligently perform the duties as set out in these by-laws or to resign the office. I am unwilling to continue to just sign blank checks handed me by Mr. Craig.

Accordingly, this letter constitutes my request that all financial records of U.T.E. since my election, including vouchers, work sheets, receipts and applicable resolution be delivered to me and to be kept in my custody for the purpose of performing the function required by the by-laws of the organization and by the Federal law.

Your are hereby respectfully advised that I will not sign any further U.T.E. checks until this is accomplished.

Yours very truly,

Joe Shamblin, Treasurer
Union of Transportation Employees

CC: Red Ball Motor Freight Lines

EXHIBIT NO. GC-66
TRANSPORT SAFETY PATROL
ROAD PATROL REPORT
CONFIDENTIAL

PATROLMAN: No. 16

NAME OF TRANSPORTATION CO.: Red Ball Motor
Freight, Inc.

EQUIPMENT OR LICENSE No.: Tractor No. 2058
Trailer No. 1709

EQUIPMENT SET-UP: Tractor and trailer

DATE AND TIME OF OBSERVATION: 12-26-60
10:25 pm

REMARKS

THIS IS AN ON THE SPOT RECORDING:

This unit is placed under observation 7 miles north of Corsicana, Texas traveling south on US 75 in the general direction of Houston, Texas. This is a 4 lane, concrete, divided highway with wide asphalt shoulders. The weather is clear. The highway is dry. Terrain is open and rolling.

This observer is now 250 feet to the rear of this unit for an open road speed check. Speed for 1½ miles has ranged from 39 to 45 mph.

Rear end protection on this unit looks good. Lights are all burning properly. Lights and reflectors are clean. Mud flaps are intact. Trailer tandems are running in line with the tractor tandems. There is no wobble in the trailer tandems.

Driver appears to be alone in this cab.

All lights on front of this unit are burning properly. This unit was observed through the city limits of Corsicana, Texas. Your driver obeyed all posted speed zones in this city limits.

This observation is being discontinued in the south city limits of Corsicana, Texas with your driver proceeding on south on US 75 in the general direction of Houston, Texas.

EXHIBIT NO. GC-70

Dallas, Texas
July 17, 1961

TO WHOM IT MAY CONCERN:

Mr. John W. Barr has brought speed violations to my

attention which occurred on June 17, 1961 while on a trip from Amarillo to Dallas driving Red Ball tractor 2080 and pulling trailer 1755. I understand that any further speed violations by me will be just cause for my immediate dismissal from the services of Red Ball Motor Freight.

Gordon S. Hodgkins

Witness:

John W. Barr

cc: UTE, Dallas, Texas

EXHIBIT NO. GC-77

TRANSPORT SAFETY PATROL
ROAD PATROL REPORT
CONFIDENTIAL

PATROLMAN: #16-U

NAME OF TRANSPORTATION CO: Red Ball Motor
Freight

EQUIPMENT OR LICENSE No.: Tractor #2105—Trailer
#4062 Ryder Trailer

EQUIPMENT SET-UP: Tractor and Trailer

DATE AND TIME OF OBSERVATION: 6-1-61, 10:59 PM

REMARKS

THIS IS AN ON THE SPOT RECORDING:

This unit is placed under observation at Splendora, Texas on U.S. Highway #59 proceeding in the direction of Lufkin, Texas.

The weather is clear and pavement is dry. This is a 2-lane highway with wide dirt shoulders. Terrain is level and wooded. Traffic is light.

Speed checked approximately 300 feet to the rear, for a distance of $1\frac{1}{2}$ miles, ranging from 49 to 53 MPH.

The rear of this unit is clean. Clearance lights, tail lights and stop lights are working. License light is working. Reflectors are visible. Mud flaps are intact. The rear tandems are running in line with the tractor. This observer is passing the unit. This is a Ryder trailer.

The tail light is working on the tractor. Mirrors are clean. Headlights are working. This unit is traveling with lights on dim. The appearance of this unit is good. Throughout this observation, the operator has stayed well to the right lane of traffic, not riding the shoulder, crossing the center line or tailgating.

This observation is being discontinued approximately 5 miles north of Splendora and unit is proceeding on U.S. #59 in the direction of Lufkin.

J. D. Bishop, Dallas

Houston to El Dorado, Arr. 7:30 A.M.

[illegible]

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RESPONDENT'S EXHIBITS

EXHIBIT NO. R-1

Dallas, Texas
May 2, 1961

Mr. H. J. Lewis
Line Driver
Dallas, Texas

Dear Mr. Lewis:

This will confirm our conversation of this date concerning your actions in dropping trailer 423 loaded with 35,000 pounds of oil on the Greenville lot under date of April 26, 1961, without having a block up under the dollies.

At the time of this interview it was pointed out to you that although this particular trailer was caught before the dollies broke through the crust of the lot it was the same situation in which you were involved under date of December 3, 1960, at the very same station, Greenville, Texas. You were again reminded that you were involved in an accident of similar nature at Tyler, Texas under date of December 9, 1960 and of another careless act at Clarksville, Texas under date of February 6, 1961. As a result of these three prior offenses you were interviewed by the undersigned on February 11, 1961 at which time you were told that we expected you to perform your duties in a manner commensurate with the salary which you were being paid. Evidently you failed to get the point of our conversation since this negligent act of your's indicates such.

You are hereby placed on probation for one year effective today, May 1, 1961, to the extent that any further act of negligence or indication of poor judgement on your part will result in your immediate dismissal. We sincerely trust this will not become necessary.

Yours very truly,
B. D. Scruggs

BDS:et
cc: Personnel File
U. T. E.

EXHIBIT NO. R-2

Dallas, Texas
March 19, 1962

Mr. H. J. Lewis
Line Driver
Shreveport, Louisiana

Dear Mr. Lewis:

This will have reference to your trip report 50630 dated March 11 and 12, 1962 which is attached to this letter. We have with-held payment for various reasons which we will outline below.

First, we would like information from you as to who okayed the tonnage reflected on this trip report. The initials B. H. appear thereon but we do not know any supervisor with those initials.

We would also like information from you as to whether or not you actually assisted in the loading of the 39,364 pounds which tonnage you have claimed as loading at Homer.

You have also indicated trailer drop and pick up and have inserted \$5.70 in the earning column which is in error as the hourly rate is \$2.80 per hour which would total \$5.60. In this connection, please be advised that you are not, under any circumstances, to insert any figures in the earnings column. If you so desire, you may make an entry on the the yellow second sheet but never on the original.

With return of this trip report by return mail, we want your answers to the above questions.

Yours very truly,
B. D. Scruggs
Director of Transportation

BDS:et
Enclosure

cc: Personnel File
U. T. E.
Mr. Tom Chapin, Shreveport

EXHIBIT NO. R-20

RED BALL MOTOR FREIGHT, INC.
DALLAS, TEXAS

September 18, 1961

TO: All Terminal Managers
All Supervisors
Red Ball Motor Freight, Inc.

SUBJECT: Trip Tickets—Time and Tonnage Claims

Gentlemen:

Effective immediately no one will approve time or tonnage claims on trip tickets by line drivers except supervisory personnel on duty during regular working hours and those company employed watchmen on duty during evening hours and week-end operations.

Under no circumstances will any individual deviate from these instructions.

Yours very truly,
Charles E. Fisk

EXHIBIT NO. R-21

LUDLOW PLASTICS
NEEDHAM HEIGHTS 94, MASSACHUSETTS

October 10, 1962

Mr. Ted Lane
Dallas Terminal Manager
Red Ball Motor Freight, Inc.
P. O. Box 10837
Dallas 7, Texas

Dear Mr. Lane:

This letter is written in further reference to our previous communication of March 20, 1962, on the subject of our

shipment No. 19869 which was shipped on March 11, 1962, from our Homer, Louisiana plant to West Virginia Pulp and Paper Company, St. Louis, Missouri, consisting of 39 rolls of paper wrapping (NOIBN), weighing 39,364 pounds, and routed Red Ball Motor Freight, Inc., in care of Strickland Transportation Company at Shreveport, Louisiana.

This shipment moved under Item 19035-I, Supplement 149 to Tariff 85-D, Middlewest Motor Freight Bureau, Agent, effective February 17, 1962, which expressly provides that the rates apply only when the shipment is loaded onto the truck by the shipper and unloaded therefrom by the consignee.

For your information each roll in the above-mentioned shipment weighed approximately 1200 pounds. Loading specifications from our customer, West Virginia Pulp and Paper Company, St. Louis, Missouri, requires that these rolls be stood on end when they are loaded for shipment. They, therefore, can only be loaded by lift truck equipment. The Homer Plant has a strict policy which permits only *specified* Ludlow personnel to operate this equipment. No outsiders or unauthorized personnel are permitted to use this lift equipment at any time.

Very truly yours,
J. E. Nash
Plant Manager

EXHIBIT NO. R-42

Mr. Ted D. Lane
Terminal Manager
Red Ball Motor Freight, Inc.
Dallas, Texas

Dallas, Texas
March 27, 1962

Dear Mr. Lane:

Please accept this as my resignation from the services of Red Ball Motor Freight, Inc., effective immediately.

Your Very Truly,
H. G. Limbaugh

RED DALL MOTOR FREIGHT, INC.

JANUARY 1961
LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

STATE	ACCIDENTS JAN		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	JAN	JAN	61	60	61	60	MO.	YR.
TEXAS	11	6	13	6	1,032,168	79,398	1,032,168	961,550	79,398	160,258	1.26	1.26
LOUISIANA	0	0	0	0	27,462	-	27,462	23,452	--	-	.00	.00
ARKANSAS	0	0	0	0	5,070	-	5,070	4,690	-	-	.00	.00
NEW MEXICO	0	1	0	1	75,929	-	75,929	70,357	--	70,357	.00	.00
COLORADO	1	0	1	0	95,796	95,796	95,796	93,810	95,796	-	1.04	1.04
OKLAHOMA	0	0	0	0	14,702	-	14,702	11,726	-	-	.00	.00
TOTALS	14	7	14	7	1,251,123	89,366	1,251,123	1,165,585	89,366	166,512	1.12	1.12

EXHIBIT NO. R-44

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RED BALL MOTOR FREIGHT, INC.

FEBRUARY 1961
LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

STATE	ACCIDENTS FEB.		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	FEB.	FEB.	61	60	61	60	MO.	YR.
TEXAS	1	12	14	18	1,021,718	1,021,718	2,053,886	1,902,010	146,706	105,668	.10	.68
LOUISIANA	0	0	0	0	25,270	-	52,732	46,390	-	-	.00	.00
ARKANSAS	0	0	0	0	4,002	-	9,072	9,278	-	-	.00	.00
NEW MEXICO	1	2	1	3	82,581	82,581	158,506	150,641	158,506	50,214	1.21	1.21
COLORADO	2	0	3	0	108,709	54,355	204,505	197,032	68,168	-	1.84	1.47
OKLAHOMA	1	0	1	0	13,704	13,704	28,406	23,195	28,406	-	7.30	3.52
TOTALS	5	14	19	21	1,255,984	251,197	2,507,107	2,328,552	131,953	110,883	.40	.76

RED BALL MOTOR FREIGHT, INC.

MARCH 1961
LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

STATE	ACCIDENTS MAR.		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	MAR.	MAR.	61	60	61	60	MO.	YR.
TEXAS	5	7	19	25	1,189,245	237,849	3,243,131	2,976,779	170,691	119,071	.42	.59
LOUISIANA	0	1	0	1	29,166	-	81,898	66,619	-	66,619	.00	.00
ARKANSAS	0	0	0	0	4,736	-	13,808	15,248	-	-	.00	.00
NEW MEXICO	1	0	2	3	88,135	88,135	246,641	222,047	123,321	74,016	1.13	.81
COLORADO	1	0	4	0	140,704	140,704	345,209	300,254	86,302	-	.71	1.16
OKLAHOMA	0	1	1	1	16,281	-	44,687	40,075	44,687	40,075	.00	2.24
TOTALS	7	9	26	30	1,468,267	209,752	3,975,374	3,621,027	152,899	120,701	.48	.65

RED BALL MOTOR FREIGHT, INC.

APRIL 1961
LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

STATE	ACCIDENTS APR.		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	APRIL	APRIL	61	60	61	60	MO.	YR.
TEXAS	7	8	26	33	1,077,374	153,901	4,320,505	4,038,512	166,173	122,379	.65	.60
LOUISIANA	0	1	0	2	25,811	--	107,709	91,443	-	45,722	.00	.00
ARKANSAS	0	0	0	0	3,870	-	17,678	21,485	-	-	.00	.00
NEW MEXICO	0	2	2	5	83,984	-	330,625	283,780	165,313	56,756	.00	.60
COLORADO	1	0	5	0	134,116	134,116	479,325	399,945	95,865	-	.75	1.04
OKLAHOMA	0	0	1	1	18,357	-	63,044	57,711	63,044	55,711	.00	1.59
TOTALS	8	11	34	41	1,343,512	167,939	5,318,846	4,890,876	156,438	119,289	.60	.64

RED BALL MOTOR FREIGHT, INC.

VEHICULAR ACCIDENT AND MILEAGE REPORT

MAY 1961
LINE OPERATION

STATE	ACCIDENTS MAY		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	MAY	MAY	61	60	61	60	MO.	YR.
TEXAS	0	3	26	36	1,187,674	-----	5,508,179	5,162,562	211,853	143,405	.00	.47
LOUISIANA	0	2	0	4	32,435	-----	140,144	116,880	-----	28,970	.00	.00
ARKANSAS	0	0	0	0	4,741	-----	22,419	26,694	-----	-----	.00	.00
NEW MEXICO	0	2	2	7	79,777	-----	410,402	348,794	205,201	49,828	.00	.49
COLORADO	1	0	6	0	171,666	171,666	650,991	505,937	103,499	-----	.58	.92
OKLAHOMA	0	0	1	1	22,447	-----	85,491	71,204	85,491	71,204	.00	1.17
TOTALS	1	7	35	48	1,498,740	1,498,740	6,817,626	6,232,071	194,789	129,835	.07	.51

RED BALL MOTOR FREIGHT, INC.

LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

JUNE 1961

STATE	ACCIDENTS JUNE		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	JUNE	JUNE	61	60	61	60	MO.	YR.
TEXAS	3	7	29	43	1,146,755	382,252	6,654,934	6,260,629	229,481	143,038	.26	.44
LOUISIANA	0	0	0	4	29,635	--	169,779	141,919	--	35,480	.00	.00
ARKANSAS	0	0	0	0	4,050	--	26,469	31,412	--	--	.00	.00
NEW MEXICO	0	0	2	7	69,035	--	479,487	414,657	239,744	59,237	.00	.42
COLORADO	0	0	6	0	171,887	--	822,878	613,833	137,146	--	.00	.73
OKLAHOMA	0	0	1	1	29,236	--	114,727	86,288	114,727	86,288	.00	.87
TOTALS	3	7	38	55	1,450,648	483,549	8,268,274	7,548,716	217,586	137,249	.21	.45

cc: Messers H. E. English
O. B. English
Beeman Carrell
Chas. D. Mathews
Chas. E. Fisk
J. R. Moore
Al E. Cudlipp Jr.

First six months operation.

9.5% Increase in mileage

31 % Decrease in accidents

RED BALL MOTOR FREIGHT, INC.

JULY 1961

VEHICULAR ACCIDENT AND MILEAGE REPORT

STATE	ACCIDENTS		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	JULY	JULY	61	60	61	60	MO.	YR.
TEXAS	4	11	33	54	1,140,643	285,161	7,795,577	7,372,577	236,230	136,529	.35	.42
LOUISIANA	0	0	0	4	29,090	—	198,869	166,248	—	41,562	.00	.00
ARKANSAS	0	0	0	0	3,257	—	29,726	35,806	—	—	.00	.00
NEW MEXICO	0	0	2	7	63,460	—	542,947	485,548	271,474	69,364	.00	.37
COLORADO	1	0	7	0	158,659	158,659	981,537	727,418	140,220	—	.63	.71
OKLAHOMA	1	0	2	10	30,265	30,265	144,992	102,775	72,496	102,487	3.30	1.38
TOTALS	6	11	44	66	1,425,374	237,562	9,693,648	8,890,413	219,083	134,703	.42	.45

cc: MESSRS H.E. ENGLISH
O.B. ENGLISH
BEEMAN CARRELL
CHAS. D. MATTHEWS
CHAS. E. FISK
J. R. MOORE
FLETCHER WARD
AL E. CUOLIPP, JR.

TO DATE: 9% INCREASE IN MILEAGE
33% DECREASE IN ACCIDENTS

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RED BALL MOTOR FREIGHT, INC.

LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

AUGUST 1961

STATE	ACCIDENTS		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	AUGUST	AUGUST	61	60	61	60	MO.	YR.
TEXAS	4	5	37	59	1,293,598	323,400	9,089,175	8,563,957	245,653	145,321	.31	.41
LOUISIANA	1	0	1	4	31,525	31,525	233,444	193,501	233,444	49,375	2.89	.43
ARKANSAS	0	0	0	0	4,218	-	33,944	41,278	-	-	.00	.00
NEW MEXICO	0	0	2	7	68,894	-	611,841	553,123	305,921	79,018	.00	.33
COLORADO	2	0	9	0	204,925	102,463	1,186,462	841,813	131,829	-	.10	.76
OKLAHOMA	0	0	2	1	36,501	-	161,493	120,912	90,747	120,912	.00	1.10
TOTALS	7	5	51	71	1,642,711	231,673	11,336,359	10,314,594	222,252	145,276	.33	.45

cc: Messrs H. E. English
O. B. English
Eeman Carrell
Chas. D. Mathews
Chas. E. Fisk
J. R. Moore
Fletcher Ward
Al E. Cudlipp, Jr.

To Date: 9.9% Increase in mileage
26% Decrease in line accidents

RED BALL MOTOR FREIGHT, INC.

LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

SEPTEMBER 1961

STATE	ACCIDENTS SEPT.		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	SEPT.	SEPT.	61	60	61	60	MO.	YR.
TEXAS	2	9	39	80	1,196,638	598,319	10,285,813	9,706,097	261,739	142,737	.17	.38
LOUISIANA	0	0	1	4	30,832	-	264,276	220,172	264,276	55,036	.00	.38
ARKANSAS	0	0	0	0	3,277	-	37,221	45,960	-	-	.00	.00
NEW MEXICO	0	0	2	7	61,231	-	673,072	618,815	336,536	88,688	.00	.30
COLORADO	1	0	10	0	182,568	182,568	1,369,030	952,689	136,903	-	.55	.73
OKLAHOMA	0	0	2	1	34,209	-	215,702	137,922	107,851	137,922	.00	.93
TOTALS	3	9	54	80	1,508,918	502,973	12,845,114	11,681,696	237,872	146,021	.20	.42

CC: H. E. ENGLISH
 O. B. ENGLISH
 CHAS. M. BICKFORD
 BEENHAM CARRELL
 J. O. CRAWFORD
 AL E. CUDLIFF JR.
 CHAS. E. FISK
 CHAS. D. MATHEWS
 J. R. MOORE
 FLETCHER W. WARD
 W. C. PERRY

TO DATE: 9.9% INCREASE IN MILEAGE
 32.5% DECREASE IN ACCIDENTS

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RED BALL MOTOR FREIGHT, INC.
LINE OPERATION VEHICULAR ACCIDENT AND MILEAGE REPORT

OCTOBER 1961

STATE	ACCIDENTS OCTOBER		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60	OCTOBER	OCTOBER	61	60	61	60	MONTH	YEAR
TEXAS	4	8	43	76	1,277,135	319,284	11,562,948	10,841,719	268,906	142,654	.31	.27
LOUISIANA	0	0	1	4	31,096	-	295,372	246,139	295,372	61,535	.00	.34
ARKANSAS	0	0	0	0	4,111	-	41,332	50,355	-	-	.00	.00
NEW MEXICO	0	0	2	7	66,502	-	739,574	686,862	369,787	86,666	.00	.27
COLORADO	0	0	10	0	158,763	-	1,527,793	1,057,404	105,740	-	.00	.65
OKLAHOMA	0	0	2	1	35,309	-	251,011	153,404	125,506	153,404	.00	.80
TOTALS	4	8	58	88	1,572,916	393,229	14,418,030	13,035,924	248,587	148,135	.25	.40

CC: MESSRS
H. E. ENGLISH
O. B. ENGLISH
CHAS. H. BICKFORD
BEEHAN CARNELL
J. O. CRAWFORD
AL E. CUDLIPP JR.
CHAS. E. FISK
CHAS. D. MATHEWS
J. R. MOORE
FLETCHER W. WARD
W. C. PERRY
FRED EWING

TO DATE: 10.6% INCREASE IN MILEAGE
34.1% DECREASE IN ACCIDENTS

RED FALL MOTOR FREIGHT, INC.

LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

NOVEMBER 1961

STATE	ACCIDENTS		TOTAL ACC		MILEAGE	MILES PER	TOTAL MILES TO DATE		MILES PER ACCIDENT		FREQUENCY	
	NOVEMBER	60	TO DATE	60			61	60	TO DATE	60	MONTH	YEAR
TEXAS	9	4	52	80	1,122,782	130,309	12,735,730	11,952,846	244,918	149,411	.77	.41
LOUISIANA	0	0	1	4	30,244	-	325,616	272,542	325,616	68,136	.00	.31
ARKANSAS	0	0	0	0	3,839	-	45,171	55,404	-	-	.00	.00
NEW MEXICO	0	0	2	7	61,763	-	801,337	769,019	400,669	109,460	.00	.25
COLORADO	0	0	10	0	189,545	-	1,717,338	1,068,764	171,734	-	.00	.58
OKLAHOMA	0	0	2	1	37,739	-	288,750	169,311	144,345	169,311	.00	.69
TOTALS	9	4	67	92	1,495,912	166,212	15,913,942	14,387,927	232,522	156,391	.60	.42

CC: MESSERS,

N.E. ENGLISH
O.B. ENGLISH
CHAS. M. BICKFORD
BEEMAN CARRELL
J.O. CRAWFORD
AL E. CUDLIPP, JR.
FRED EYING
CHAS. E. FISK
CHAS. D. MATHEWS
JESS MOONEY
J.R. MOORE
FLETCHER WARD
W.C. PERRY

TO DATE: 10.6 % INCREASE IN MILEAGE

27.2 % DECREASE IN LINE ACCIDENTS

LINE OPERATION

FINAL REPORT FOR 1961

RED BALL MOTOR FREIGHT, INC.

VEHICULAR ACCIDENT AND MILEAGE REPORT

DECEMBER 1961

STATE	ACCIDENTS		TOTAL ACC TO DATE		MILEAGE DECEMBER	MILES PER ACCIDENT DECEMBER	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	61	60	61	60			61	60	61	60	MO.	YR.
TEXAS	3	10	55	90	1,068,387	356,129	13,804,117	12,957,830	250,984	143,976	.28	.40
LOUISIANA	0	1	1	5	25,982	-	351,598	295,663	351,598	59,133	.00	.28
ARKANSAS	0	1	0	1	6,378	-	51,549	59,812	-	59,812	.00	.00
NEW MEXICO	1	1	3	8	57,903	57,903	859,240	844,241	286,413	105,530	1.73	.35
COLORADO	1	0	11	0	153,198	153,198	1,870,536	1,164,764	170,049	-	.65	.58
OKLAHOMA	0	1	2	2	34,152	-	322,902	183,470	161,451	91,735	.00	.62
TOTALS	5	14	72	106	1,346,000	269,200	17,259,942	15,605,821	239,721	147,223	.37	.42

CC: HESSERS, H.E. ENGLISH
O.B. ENGLISH
CHAS. M. BICKFORD
BEEHAN CARRELL
J.O. CRAWFORD
AL E. CUDLIPP, JR.
FRED EWING
CHAS. E. FISK
CHAS. D. MATHEWS
JESS MOONEY
J.R. MOORE
FLETCHER V/PO
W.C. PERRY

FOR THE YEAR 1961: 10.6 % INCREASE IN MILEAGE
32.1 % DECREASE IN LINE ACCIDENTS

RED BALL MOTOR FREIGHT, INC.

VEHICULAR ACCIDENT AND MILEAGE REPORT

January 1962

Line Operation

STATE	ACCIDENTS January		TOTAL ACC TO DATE		MILEAGE January	MILES PER ACCIDENT January	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	62	61	62	61	January	January	1962	1961	1962	1961	Mo.	Yr.
TEXAS	11	13	11	13	1,172,625	106,602	1,172,625	1,032,168	106,602	79,398	.94	.94
LOUISIANA	0	0	0	0	26,909	-0-	26,909	29,462	-0-	-0-	.00	.00
ARKANSAS	0	0	0	0	4,719	-0-	4,719	5,070	-0-	-0-	.00	.00
NEW MEXICO	0	0	0	0	62,878	-0-	62,878	75,925	-0-	-0-	.00	.00
COLORADO	1	1	1	1	181,284	181,284	181,284	95,796	181,284	95,796	.55	.55
OKLAHOMA	0	0	0	0	37,847	-0-	37,847	14,702	-0-	-0-	.00	.00
TOTALS	12	14	12	14	1,486,262	123,855	1,486,262	1,251,123	123,855	89,366	.81	.81

cc: Messrs H. E. English
O. B. English
Chas. M. Bickford
Beeman Carroll
J. O. Crawford
Al E. Cudlipp, Jr.
Chas. E. Fisk
Chas. D. Mathews
J. R. Moore
Fletcher W. Ward
W. C. Perry
Fred Ewing
Jesse Mooney

13.6% Decrease in Line Accidents
18.8% Increase in Mileage

EXHIBIT NO. R-45

376

BEST COPY
from the orig

RED BALL MOTOR FREIGHT, INC.

LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

FEBRUARY 1962

STATE	ACCIDENTS		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	62	61	62	61	FEBRUARY	FEBRUARY	62	61	62	61	NO.	YR.
TEXAS	5	1	16	14	1,169,053	233,811	2,341,678	2,053,886	146,355	146,706	.43	.68
LOUISIANA	0	0	0	0	27,624	-	54,533	52,732	-	-	.00	.00
ARKANSAS	0	0	0	0	3,642	-	8,361	9,072	-	-	.00	.00
NEW MEXICO	0	1	0	1	67,610	-	130,488	158,506	-	158,506	.00	.00
COLORADO	0	2	1	3	165,337	-	346,621	204,505	346,621	68,168	.00	.29
OKLAHOMA	0	1	0	1	32,472	-	70,319	28,406	-	28,406	.00	.00
TOTALS	5	5	17	19	1,465,738	293,148	2,952,000	2,507,107	173,647	131,953	.34	.58

CC: Messrs H. E. English
O. B. English
E. B. Bailey
C. H. Bickford
Beeman Carroll
J. O. Crawford
A. E. Cudlipp, Jr.
C. E. Fisk
C. D. Mathews
J. R. Moore
F. W. Ward
W. C. Perry
F. S. Ewing
Jesse Hooney

TO DATE:

17.7 % Increase in mileage

10.5 % Decrease in accidents

EXHIBIT NO. R-46

BEST COPY AVAILABLE
from the original bound volume

INDUSTRIAL MOTOR FREIGHT, INC.

LINE OPERATION

VEHICULAR ACCIDENT AND MILEAGE REPORT

MARCH 1962

STATE	ACCIDENTS		TOTAL ACC TO DATE		MILEAGE	MILES PER ACCIDENT	TOTAL MILES TO DATE		MILES PER ACCIDENT TO DATE		FREQUENCY	
	62	61	62	61	MARCH	MARCH	62	61	62	61	MO.	YR.
TEXAS	15	5	31	19	1,346,420	89,761	3,688,098	3,243,131	125,423	170,691	1.11	0.84
LOUISIANA	2	0	2	0	31,258	15,629	85,791	81,898	42,896	-	6.40	2.33
ARKANSAS	1	0	1	0	5,454	5,454	13,815	13,808	13,815	-	8.34	7.24
NEW MEXICO	0	1	0	2	75,205	-	205,693	246,641	-	123,321	0.00	0.00
COLORADO	1	1	2	4	190,811	190,811	537,432	345,209	268,716	86,302	0.52	0.37
OKLAHOMA	0	0	0	1	41,572	-	111,891	44,687	-	44,687	0.00	0.00
TOTALS	19	7	36	26	1,690,720	83,722	4,642,720	3,975,374	129,242	152,899	1.12	0.78

cc Messrs

W. E. English
O. B. English
Charles M. Bickford
Beaman Carroll
J. O. Crawford
Al E. Cudlipp, Jr.
Fred Ewing
Charles E. Fisk
C. D. Mathews
Juise Mooney
J. R. Moore
W. C. Perry
Fletcher W. Ward
E. B. Bailey

16.79% Increase in Mileage
38.46% Increase in Accidents

EXHIBIT NO. R-4

EXHIBIT NO. R-51

TO: All Terminal Managers
All Shop Foremen
All Dock Foremen

March 20, 1962

Subject: February Accident Analysis

Gentlemen;

It is apparent from the number of Safety Meetings that were *not held* and the increase in both Fleet and Personal Injury accidents, that "Safety has been treated like an illegitimate child at a family reunion."

You have been told in the past and I repeat, Safety is a part of your everyday operation. You will take immediate steps to stop this needless waste of money, manpower and materials.

The attached list of causes should give you many areas in which to work and improve.

The Safety Dept. will assist you with your problems whenever necessary and the problem is brought to its attention.

Very truly yours,
John W. Barr

EXHIBIT NO. R-57

TRANSPORT INSURANCE COMPANY
HOME OFFICE: 4100 HARRY HINES BLVD.
DALLAS, TEXAS—Lakeside 6-3876

PERSONAL AND CONFIDENTIAL
5-16-62

Mr. Beeman Carroll, Vice President
Red Ball Motor Freight
3177 Irving Bldg.
Dallas, Texas

Re: Claim No: D19-402-02
Claimant: Long et al.
Your Driver: Elton Edwin Cathey
D/A: 4-1-62
Location: Eldorado, Ark.

Gentlemen:

We wish to advise you that this case has been closed as of 5-16-62. The following payments have been made:

	No. of Units	Paid	No. of Units Cwp'd	Closing Reserve	Recovered	Allocated Expense Paid
Bodily Injury	_____	\$ _____	_____	\$ _____	\$ _____	\$ _____
Property Damage	2	\$ 653.85	_____	\$ _____	\$ _____	\$ _____
Cargo	_____	\$ _____	_____	\$ _____	\$ _____	\$ _____
Fire	_____	\$ _____	_____	\$ _____	\$ _____	\$ _____
Compensation	_____	\$ _____	_____	\$ _____	\$ _____	\$ _____
Medical	_____	\$ _____	_____	\$ _____	\$ _____	\$ _____
Other	_____	\$ _____	_____	\$ _____	\$ _____	\$ _____

Note: Occasionally, allocated expense items will be paid after settlement has been effected. Additional expense items paid after you receive this letter will appear on your experience record.

If you have any questions, please let us know.

Very truly yours,
Claims Department
M. J. Ferrick

CHARGING PARTY'S EXHIBITS

EXHIBIT NO. CP-1

**TRANSPORT SAFETY PATROL
ROAD PATROL REPORT****CONFIDENTIAL**

PATROLMAN: #6

NAME OF TRANSPORTATION CO.: Red Ball Motor
Freight, Inc.EQUIPMENT OR LICENSE No.: Tractor #2845 *Trailer
not visible 1562

EQUIPMENT SET-UP: Tractor and Trailer

DATE AND TIME OF OBSERVATION: 1-7-60, 10:00 PM

REMARKS***THIS IS AN ON THE SPOT RECORDING:***

Unit is under observation proceeding south on State Highway #49, from Mt. Pleasant, Texas.

This is 2 lane, asphalt highway, with gravel shoulders. Terrain is open and rolling. Weather is clear, pavement is dry.

The clearance and tail lights are burning brightly. Operator is dimming headlights for oncoming traffic. Mud flaps are intact. Rear tandems are rolling in line.

Operator is proceeding in the right lane of traffic. There is no weaving over highway. There is no riding the shoulder or the center line. There is no tailgating.

Operator is proceeding at 58 MPH in open road speed check. This open road speed check is being made for approximately 3 miles at approximately 400 feet to the rear.

* There is no trailer number at the rear of unit.

Observer is passing unit. Both headlights are burning brightly. The clearance lights are burning brightly.

Observation is being discontinued approximately 7 miles south of Mt. Pleasant, Texas.

LEWIS: We checked Transport Patrol on this to have the recording re-read to be sure the speed as indicated was correct (58 MPH). We find that this was correct and also received a copy of the chart in the checker's car which indicated that the speed was correct by that means also. We then had the truck you were driving calibrated on the (? ? ?) here in Dallas and found that the speedometer was registering some 8 miles per hour fast. In checking your chart from Sherman to Shreveport, it looks as though you were driving close to the 50 miles per hour which is a little too fast, and the difference in your chart and actual speed is too much. Watch this more closely in the future and vary your speed accordingly.

1-11-60 bt.

B. D. Scruggs

Try Safety—There's A Future in It!

EXHIBIT NO. CP-2

INTERVIEW MEMORANDUM

RED BALL MOTOR FREIGHT, Inc.

Form 129

NAME: J. A. Shamblin

STATION: Dallas, Texas

DUTIES: Pickup-Delivery Driver

DATE: Oct. 19, 1961

For the purpose of assisting me to perform my duties more satisfactorily, the following matters have been fully discussed with me: In order to receive an equal amount of

daily hours the work performance of Joe Shamblin must equal that of other hourly employees. Also, Mr. Shamblin was instructed not to loiter on company premises after work was complete and he has punched off the time clock.

INTERVIEWED BY:

SIGNATURE OF EMPLOYEE:

Original to Personnel Dept., Gen. Office, Dallas, Texas.

Copy to be placed in Agency Personnel File

Copy to Union of Transportation Employees

Copy to Employee interviewed

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF TRIAL EXAMINERS
WASHINGTON, D. C.

RED BALL MOTOR FREIGHT, INC.

and

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS LOCAL UNION No. 968; DALLAS
GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION No. 745; TRUCK
DRIVERS AND HELPERS LOCAL UNION
No. 568, ALL AFFILIATED WITH THE IN-
TERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Case No.
23-CA-1435

Jerome L. Avedon, Esq., for the Gen-
eral Counsel.

Charles D. Mathews, Esq., and *Allen
P. Schoolfield, Jr., Esq.*, of Dallas,
Tex., for the Respondent.

Mullinax, Wills, Morris & Mauzy, of
Dallas, Tex., by *David R. Richards,
Esq.*, for the Union.

Before: *Horace A. Ruckel*, Trial Ex-
aminer.

**INTERMEDIATE REPORT AND
RECOMMENDED ORDER**

Statement of the Case

Upon an original charge filed on May 26, 1962, and upon amended charges filed on June 18 and July 5, 1962, by General Drivers, Warehousemen and Helpers Local Union No. 968; Dallas General Drivers, Warehousemen and Help-

ers, Local Union No. 745; Truck Drivers and Helpers Local Union No. 568, all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, herein collectively called the Union or the Teamsters, the Regional Director for the Twenty-third Region of the National Labor Relations Board, herein called the Board, on July 6, 1962, issued his complaint against Red Ball Motor Freight, Inc., herein called Respondent, alleging in substance (1) that Respondent has threatened certain of its employees with discharge and physical violence and, (2) on various dates discharged or laid off seven employees and refused to reinstate them, because of their activity on behalf of the Union, in violation of Section 8(a)(1) and (3) of the National Labor Relations Act, as amended (29 U.S.C. Sec. 151, and following), herein called the Act.

On July 13, 1962, Respondent filed its answer in which it denied the commission of any unfair labor practices.

Pursuant to notice the undersigned Trial Examiner conducted a hearing at Houston and Dallas, Texas, on September 10, 12, 13 and 14, and November 13, 14, 15 and 16, 1962, at which the parties were represented by counsel. All parties subsequently filed briefs.

Upon the entire record in the case and from my observation of the witnesses, I make the following:

Findings of Fact

I. The business of Respondent

Respondent is a Delaware corporation having its principal office and place of business at Dallas, Texas, and operating terminals at Houston, Texas, Shreveport, Louisiana, El Dorado, Arkansas, Denver, Colorado, and other locations in various States of the United States where it is engaged in the business of transporting goods and commodities by motortruck, under license by the Interstate Commerce Commission.

During the 12 months prior to the issuance of the complaint, Respondent, in the course and conduct of its business received in excess of \$1,000,000 for the interstate transportation of goods and commodities.

II. The labor organizations involved

General Drivers, Warehousemen and Helpers Local Union No. 968; Dallas General Drivers, Warehousemen and Helpers Local Union No. 745; Truck Drivers and Helpers Local Union No. 568, all affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, are labor organizations within the meaning of Section 2(5) of the Act.

III. The unfair labor practices

A. Background

Respondent operates as a common carrier of freight in various States of the United States. Its general office and main terminal are at Dallas, Texas. Altogether it operates 79 terminals in the South and Southwest. This proceeding is limited to events occurring at the Dallas, Shreveport, and Houston locations.

The Union has for some years been attempting to organize Respondent's drivers in the unit of employees presently represented by Union of Transportation Employees, herein called U.T.E., which has a collective-bargaining agreement with Respondent. In 1948 the Board found¹ as a result of charges filed by the Teamsters Union, that several motor carriers, of which Respondent was one, had unlawfully controlled the National Association of Motorized Common Carrier Truck Line Employees, purporting to represent the truckers' employees, and ordered its disestablishment. The Board found that one R. S. Craig was a management repre-

¹ *N.L.R.B. v. Red Arrow Freight Lines, Inc., et al.*, 77 NLRB 859; enforced 180 F. 2d 585, cert. denied 340 U.S. 823.

sentative of Respondent and that Respondent had expressly authorized Craig to form the Association. Sometime following the Board Order disestablishing the Association, U.T.E. was formed, with Craig as its president.

Efforts of the Union to organize Respondent's employees and to displace U.T.E. as their bargaining representative were revived during the latter part of 1960 and the early part of 1961. In July 1961, an election was conducted in U.T.E. in which James Hester ran for the presidency of U.T.E. against Craig. Teamster adherents were active in support of Hester. Hester lost, and on July 26, 1961, was discharged for speeding. It is not alleged in the complaint that this was a discriminatory discharge. Neither is it alleged that Respondent has formed and dominated U.T.E. as it did the previous Association, or that Craig was and is Respondent's instrument for this purpose. It is a reasonable conclusion, however, which I draw in view of the close relationship between the Association, U.T.E., Craig, and Respondent, that Respondent who admittedly knew that the employees named in the complaint were active in the Teamsters, also were aware that they were leaders of a dissentient group in U.T.E. and supported Hester as against Craig, an activity which in view of the latter's previous services to Respondent, it could not have viewed with favor.

On November 30 and December 1, 1961, on the petition of the Union,² the Board conducted an election among Respondent's employees. The Union lost the election. Respondent participated actively in the preelection campaign and directed a series of letters to its employees and their families over the signature of Henry English, chairman of its Board of Directors, and O. B. English, criticizing the Union and contrasting it unfavorably with U.T.E. In addition, a number of Respondent's highest officials convened meetings of employees and addressed them in the same

² Case No. 16-RC-3016.

vein. The letters and the speeches were in the familiar *American Tube Bending*³ pattern, and it is not contended that their utterance was in violation of the Act. The speech was sometimes lurid but at all times free. These activities do show, however, that Respondent is hostile to the Union.

In the preelection campaign all seven of the employees named in the complaint either acted as observers for the Union at the election, or else were designated to do so, and their activity was well known to Respondent. They were terminated during the period from March 27 to May 8. They were: Horace Limbaugh, H. W. Lewis, Elton Cathey, William Clem, Joe Shamblin, Gordon Hodgkins and W. T. Willingham.⁴ This was almost, but not quite, all the union observers at the election. One M. A. Butler, is still employed and his name does not appear in the complaint. Another, C. C. Fox, who was designated as an observer but did not serve, is still employed. One U.T.E. observer, Robert Shanklin, was discharged in March 1962.

Respondent asserts that these seven employees were legitimately terminated for various categories of offenses, or else voluntarily quit, or were laid off for economic reasons.

B. The discharges

1. Discharges for speeding

a. The safety program

In April 1961, Respondent employed John Barr as safety director for the purpose, among others, of tightening up its safety program to reduce the number of accidents. All line (over-the-road) drivers come under his personal supervision for this purpose. City drivers remain under the supervision of the terminal managers. In May, Barr began

³ *American Tube Bending Company, Inc., and Local 420, International Association of Machinists*, 44 NLRB 121.

⁴ Another, Hall Nichols, is alleged to have been discriminated against by being singled out for warnings and constantly checked upon.

addressing employees at a series of safety meetings. His credited testimony is that he told the employees that Respondent was tightening up its safety program and warned them against driving within a town or city in excess of the posted speed limit. The Texas speed limit for trucks on the open road, however, is 45 miles per hour, and Barr testified that Respondent has always tolerated a speed up to 50 miles. The employees were never officially informed of this because, according to Barr, if they were told that they were given an inch they might take a mile, or in this case five.⁵ It is not disputed that the employees knew of this tolerance and drove accordingly.

Respondent has three methods of checking speed: (1) by a tachograph attached to every truck which records, along with the speed, the date, how many hours it is driven each trip, and where it stops. The driver drives a different truck every night (2) by transport safety reports which are recordings made by insurance company patrolmen who make on-the-spot checks; and (3) personal following of trucks by Barr or some other safety employee, and use of radar.⁶

The tachograph charts and transport safety reports are used as tools to indicate whether drivers are violating driving regulations. If they indicate drivers, in general, are going too fast, Barr may then decide to follow a truck personally. Tachograph charts accumulate to the number of 7,000 or 8,000 a month from all over the system. They do not cross Barr's desk. They are kept for a month in the Dallas shop under the number of the vehicle, and not under the name of the driver.⁷ Barr occasionally spot checks them by taking "a fistfull—at random, just starting through them and looking for violations." As to the trans-

⁵ It is also probable that Respondent did not care to sanction in words a violation of State law.

⁶ Also, each truckdriver maintains a log which records among other things the number of hours on and off duty and where he stops.

⁷ The driver of a particular truck, however, can be ascertained by inquiring of the dispatcher or checking the truck number against the sign-in-and-out register.

port safety reports, when Barr received one which indicated a violation of some sort he would "at (his) earliest convenience get out there and personally check."

Barr's further testimony on direct is:

I will never discharge a man on the strength of the transport reports or tachograph charts alone. I won't discharge a man if I go out there and check him and catch him the first time in person. If I get out there and check him personally, visually, myself, and that is the first violation. I will not discharge him. I will give him a warning letter.

On cross-examination Barr amended his testimony:

Q. I think you said before that you will not discharge a man on the basis of a visual infraction on just the first time. Is that right? A. If he has never been warned before.

As I understand Barr's testimony it is that he never discharges for speeding except when there has been a previous reported violation pursuant to which a warning has been given. But this previous reported violation need not have been witnessed by him personally. It may have been a violation appearing on a tachograph chart or a transport report. Given such a report, a subsequent personally observed violation may result in discharge.

As to whether a warning is always given when a violation is reported, Barr testified that he has never overlooked a violation or neglected to issue a warning letter when he "thought one was due." When he did not think one was due, he did not issue it. It was not automatic.

Although Barr's testimony is that Respondent never discharges drivers for speeding on the basis of a tachograph report or a transport safety report, alone, but only on the basis of his personal observation, after a prior warning, he did not testify that these drivers whom he personally caught speeding after a warning were invariably, or even customarily, discharged. They might be or they might not. He testified that there was "no fixed practice." Each case

is "based on its own merits." He thus exercised his discretion as he testified he did in issuing warning notices, when he "thought one was due," and as he further did with respect to discharge because of chargeable accidents.* Discharge for this reason, he stated, followed no fixed rule.

Since a driver is discharged only after Barr has personally observed him speeding after a prior warning, it becomes important to know what it is which determines him to make a personal observation of the trucks. Again, there is nothing systematic about this. It is manifestly impossible for him to follow every driver whose tachograph reports show he may have been speeding, nor did he have a consistent practice of following drivers who had been given prior warnings." Here again, he followed no fixed rule, and was unable to say even approximately how often he followed trucks or how many he followed. It was done on a random basis:

Q. Now when you check up on city pickup and delivery drivers— A. Yes, sir, sure do.

Q. How often do you do that? A. Well, I don't have any set pattern. Just whenever the time or the opportunity affords itself—

Q. In March 1962, how many observations did you make of city pickup and delivery drivers? A. I don't know, sir.

* * * * *

Q. How about April, in 1962— A. I can't recall.

* * * * *

Q. How about May 1962. How many spot checks of city pickup and delivery drivers did you make in that month?

A. I made several in Houston that I recall.¹⁰

* A chargeable accident is one which, on its face, is the fault of the driver.

⁹ He testified that some drivers had four or five warnings for speeding but were not discharged because they had not been caught.

¹⁰ This is the month in which Willingham, a Houston pick up and delivery driver whose discharge is hereinafter discussed, was terminated (May 9).

Q. Did you make any in any other city in the month of May? A. No sir.

Q. How about June 1962. Did you make spot checks of city pickup and delivery drivers in any of the cities of the Red Ball system? A. In June 1962, I was pretty busy trying to reorientate our people in the Southeast division—

Q. In other words, your answer is no? A. No. That is correct.

Barr's continued testimony is that he made no checks in July and August 1962. He further testified:

Q. How would you determine how you were going to make your check? A. There was no determination.

Q. I mean what caused you to check the drivers that you did check? A. Nothing—

Q. Did you do it on a random basis? A. Yes, sir, it was done on a random basis.

• • • • •

Q. Did you just cruise around? A. I just cruised around.

• • • • •

Q. Did you ever say, sit in a place waiting for them to come by? A. Yes, sir.

Q. When was that? A. At the City Dock 18.¹¹

Although Barr here is testifying as to how he checked city pick up drivers it is clear from his testimony as a whole that over-the-road drivers were checked on the same hit-or-miss basis.

b. Gordon Hodgkins

Hodgkins started working for Respondent in May 1956, as a line driver based on Dallas. He continued in its employ to May 4, 1962, when he was discharged. Prior to July 17,

¹¹ As will be seen later, on this occasion Barr waited for Willingham at Dock 18 for an hour and a half while he was unloading, and then followed him.

1961, he was never warned, reprimanded or disciplined for speeding or for any log violation.

In March 1960, Hodgkins became a line committeeman for the U.T.E. and supported Hester for the presidency of U.T.E. as against Craig. On July 17, 4 days after the election, which Hester lost, Hodgkins was called to Barr's office where Barr told him that he had been checking Hodgkins' tachograph charts and ICC logs for the period of June 16-30 and that Hodgkins had made some improper log entries. Barr proceeded to type a letter stating that any future errors would result in his discharge, and required him to sign it. He also produced a tachograph chart which Barr said showed he had driven up to 55 miles per hour over a stretch in Arkansas. Hodgkins told Barr that the speed limit in Arkansas was 60 miles per hour which Barr, after checking, admitted was correct. Barr thereupon produced another chart which, Barr said, showed sustained speeds of 50 miles per hour on a Texas stretch, with short bursts of speed in excess of 50, and typed up another letter which Hodgkins signed, stating he had been speeding.

Barr testified that he could not recall how many tachograph charts he checked in July 1961, but that there were "several." He could not recall any except those pertaining to Hodgkins, Hester, Eldon Cathey (named in the complaint), and another employee, Mayberry, and I find that this was all. These charts he testified he selected on a spot check basis; he walked down to where the charts were kept and "picked up a handful." He issued warning letters to Hester and Cathey as well as Hodgkins, but not to Mayberry, as to whose chart or log he said he was mistaken in believing it in error.

On July 26, 1961, 9 days later, Respondent discharged Hester for speeding. The discharge of Cathey is hereinafter discussed.

In the fall of 1961, the dissident group in the U.T.E. who had supported Hester became active in the Teamsters'

organizing campaign. Hodgkins, along with the six others named in the complaint as dischargees, was an observer in the Board election on November 30-December 1.

In April 1962, Hodgkins was assigned a regular run from Houston to Dallas, generally carrying LTL freight.¹² His usual time of departure was between 9 p.m. and midnight. As a rule Mabra, another driver on the run, left between 7 and 9 p.m. On May 3, about 6:45 p.m., when Hodgkins arrived at the office of the dispatcher, Samons, he heard Samons who was talking on the telephone say, "But Mabra is due out first," and then, "Well, I will get them both out by 8 o'clock some way." Samons did not testify. Barr testified that he did not check the schedules for drivers leaving that night, with Samons, and that he did not talk to Samons on the telephone. Both Mabra and Hodgkins were dispatched at 8 p.m., although Hodgkins had never before left before 9 p.m.

Shortly after midnight when Hodgkins was 500 to 600 yards inside the city limits of Corsicana, Texas, Hodgkins observed a parked car driven by Barr, which started after his truck. Shortly thereafter Hodgkins pulled over to check his tires and Barr, with whom was Lane, Dallas terminal manager, pulled alongside. Barr testified that Lane had never previously accompanied him when checking on drivers. Barr asked Hodgkins if he was familiar with Respondent's rule requiring a driver to bump his tires every 50-75 miles and said he would see Hodgkins when he got back to Dallas. Nothing was said about speeding or being checked by radar. Barr and Lane returned to Dallas to await Hodgkins' arrival without waiting to check any more trucks, although Barr testified that he knew other drivers were due to go through. He did, however, check two trucks which passed before Hodgkins did, and found no speed violation.

Barr, according to his testimony, on his way back to Dallas decided to discharge Hodgkins. He admitted that

¹² Less than truck load.

he did not check his personnel file, which was at the office, before making the decision. If he had done so he would have found that Hodgkins during his 6 years with Respondent received a safety award in every year, and had received only one warning for violating company regulations—that issued the previous July under the circumstances previously described.

When Hodgkins got back to Dallas, Barr discharged him for traveling at 35 miles per hour, or 5 miles per hour as shown by radar, in excess of the posted limit of 30 miles. Hodgkins conceded that he might have been going at this rate when he passed Barr but not afterward, giving as an explanation while testifying that at that point there is a downgrade and he intended to let the truck fall back to 30 miles per hour on the upgrade.

c. W. T. Willingham

Willingham came to work for Respondent in 1954 as a city pickup and delivery driver in Houston. In about September 1961, he was transferred to the job of gasman whose duties were to gas up trailers and back them around the yard up the loading docks. Around the middle of November 1961, he was changed to a city pickup driver.

In the summer of 1961 Willingham became active in signing up members in the Union and later served at the Board election as observer for the Union at the Houston terminal, along with Hall Nichols. It is not disputed that a week or 10 days prior to the election, he had a conversation with Alvie Simpson, Houston assistant terminal manager in which Simpson expressed himself as opposed to the Union. Willingham's interest in it was well known to Respondent.

In March 1962, Willingham along with two others, was given a written warning for exceeding 10 miles per hour in Respondent's yard, in violation of a company rule.

On May 9, Barr, according to his testimony, decided to check some of Respondent's drivers of six-wheel equipment

as to their driving habits, and ascertained from Foster, Houston terminal manager, in what part of town these trucks might be found, but without obtaining any knowledge as to who the drivers were. Accordingly, he drove to City Dock Number 18, at the waterfront. This was the only time between March and August 1962, when, so far as he could remember, he checked on city pickup and delivery drivers. Between May 7 and 10 he checked on seven or eight.

At dock Number 18, where he arrived about 1:30 p.m., Barr found Willingham's truck being loaded. He remained there for about an hour and a half waiting for it to pull away. When Willingham pulled away Barr followed his truck down McCarthy drive, a four lane street, where he saw Willingham at one point going 45 miles per hour in a 40-mile zone, and then go through a stop light. When Willingham made another stop to load, Barr again waited for him until he had loaded and at 4:23 p.m. followed him back to the terminal. Altogether Barr spent approximately 3½ hours following Willingham. As a result, he testified, he did not check on any other equipment and left Houston that evening.

At the terminal, Barr, according to his testimony, asked Foster to find out who was driving the truck and Foster called Willingham to the office where Barr played back to him a tape recording which Barr had made while following him. Foster then discharged Willingham.

Conclusions

Respondent urges as to the discharges of Hodgkins and Willingham for speeding that there was no disparate treatment of them. Hodgkins admittedly drove for about a third of a mile within the city limits of Corsicana at 5 miles in excess of the posted speed limit, in violation of Respondent's announced policy. Willingham did the same thing within the city limits of Houston, and in addition ran a red light. Both had been previously warned, Hodgkins

once, 10 months previously, and Willingham once, on March 28, 1962. Respondent cites the instances of two other employees (Samons and Houston) who speeded on other occasions and who were warned, but not discharged because Barr had not caught them personally. Where, Respondent asks, is there a showing of disparate treatment?

I am not impressed with this argument. All it shows is that since Hodgkins and Willingham were personally observed to be speeding by Barr, and Samons and Houston were not, their discharge was *not inconsistent* with Respondent's stated policy. It is clear from Barr's testimony that both warnings and discharges depended upon all the facts and circumstances, and were not automatic. He used his own judgment. It has also been found that he used his own judgment as to what drivers he should follow.

Hodgkins each year of his employment had received a safety award. He had had but one warning. On the occasion of this warning, which took place during the election in U.T.E. when Hester, with Teamster support, was running against Craig, Barr reached into a reservoir of tachograph discs and reports from seven to eight thousand in number and drew out "several," which I have found were four.¹³ These four were reports on Hester, Hodgkins, Cathey and Mayberry. This, according to Barr, was entirely accidental. Hester, Hodgkins and Cathey were given warnings. Mayberry, whose union affiliation is not revealed by the record was not. Hester, Hodgkins and Cathey were subsequently discharged, the first two assertedly for speeding, and Cathey because of an accident.

On May 3, 1962, Hodgkins was dispatched on his run to Houston from Dallas an hour earlier than he had ever previously been dispatched. Barr lay in wait at Corsicana, radar established, along with Lane, terminal manager, who Barr testified had never previously accompanied him on

¹³ While Barr drew out only four on the occasion, he testified as to his general practice that "whenever I get ready to make a spot check, I will just go down and grab a fistfull of charts."

such an expedition. Barr observed one or two of Respondent's trucks pass by proceeding, according to Barr, within the speed limit. Hodgkins, shortly after midnight, they observed traveling at 5 miles an hour in excess of the speed limit, from the city limits to a point one-third of a mile within the city limits. Although they talked with Hodgkins, they said nothing about speeding, which would seem the natural thing to do since he still had some distance to continue in Corsicana and Barr assertedly was paying particular attention to speeding within the limits of a city.

Having found Hodgkins speeding, Barr and Lane made no further check on other drivers. On the way back to Dallas, Barr admittedly decided to discharge Hodgkins without referring to his personnel file. This would have shown him with only one previous warning, and that 10 months previously, and with a safety award every year of his employment. In the absence of the file and of any testimony by Barr that he personally recalled giving Hodgkins a warning the previous July, I cannot understand how he could have been sure that Hodgkins had received a previous warning, a precondition for discharge. I am unable to believe that the circumstances attending Hodgkins' discharge were purely coincidental.

So with Willingham. I cannot believe that Barr waited for an hour and a half at the Houston dock until Willingham had loaded his truck and consumed another 2 hours following him throughout the streets of Houston, waiting until he made another pick up and following him back to the terminal, without knowing before he set out, or discovering along the way, that the truck he was following was driven by Willingham. As previously found, Barr could not remember any other instance where he waited an hour and a half for a parked truck to load so that he could follow it.

Here, as in the case of Hodgkins, Respondent's practice did not require that it discharge Willingham who had only one prior warning, and that for driving too fast on Respon-

dent's property,¹⁴ but only that all the circumstances be considered. Both Hodgkins and Willingham, along with the employees whose termination is hereinafter considered, had one factor in common. They were known to be active in the interests of the Union, and had served (Hodgkins and Willingham, among others) or been designated to serve as observers for the Union at the Board election. Respondent's opposition to the Union and its support of the U.T.E. was made unmistakably clear to the employees in speeches and letters.

Respondent's records show that from the beginning of 1962 to May 9, the date of Willingham's discharge, Hodgkins and Willingham, both Teamster supporters and election observers, were the only drivers in Respondent's entire system who were discharged for traffic violations, in spite of the fact that there were more than twice as many supporters of the U.T.E. as there were supporters of the Teamsters.¹⁵

I conclude and find that Hodgkins and Willingham were not discharged because of speeding violations, but because of their activities on behalf of the Union.

2. Discharges for accidents

a. Horace Limbaugh

Limbaugh was employed in August 1957, on the Dallas dock. In 1958 he was transferred to making pickup and delivery runs. In the latter part of 1961, after the U.T.E. election, he became active in the Union's organizing campaign and signed up more than 50 drivers. In October 1961, he was called to the office of Meeks, then terminal manager, where Hitt, a foreman, was present, and Meeks

¹⁴ It is not contended that this was a violation of law, but of Respondent's own rule.

¹⁵ On the basis of the results of the Board election, where out of 627 ballots cast, 435 were cast for the U.T.E. (69%) and 192 for the Teamsters (31%).

asked Limbaugh, according to the latter's credited testimony, if he was for the Teamsters, stating, however, that he was already aware of it because he had seen men standing around his car at night signing up for the Union. Two days before the election Meeks again asked Limbaugh if he was for the Union and Limbaugh said that he was. Meeks was not called as a witness and Hitt did not testify on the point. As has been stated, Limbaugh along with the others named in the complaint served as an observer at the election. His activity in the Union was well known to Respondent.

On Friday, March 23, 1962, Limbaugh while on a Dallas city run backed into a boy on a bicycle when he was straightening out his truck preparatory to unloading. The boy was not hurt but the front wheel was damaged and Respondent subsequently paid \$8.19 to have it repaired. Limbaugh's credited testimony is that the bicycle came up under the rear of the truck so that it could not be seen through the rear-view mirror. Limbaugh telephoned in a report to Haslet, the dispatcher, who told him to finish his run. That evening Haslet told him to make out an accident report on Monday. On Monday morning Limbaugh forgot to make out his report before leaving on his run. When he got back that evening he found his timecard pulled and when he asked Lane, terminal manager, about it, Lane told Limbaugh to see him the next morning. On the following morning he did so. Lane called Limbaugh's attention to several backing accidents he had had in previous years, stated they were too many, and told Limbaugh that he was suspended during investigation.¹⁶

Limbaugh's testimony is that he then asked Lane how long he would be suspended and Lane said that it was up

* This is Respondent's usual procedure. Ordinarily an employee is paid during an investigatory suspension, which normally is completed within 24 hours. If he is suspended after investigation, this is a disciplinary suspension and he is not paid while it is in effect. I find that Limbaugh had no knowledge of the exact procedure.

to the general office, Limbaugh said that Charles Fisk, Respondent's vice president in charge of operations, was "after him" and that he was being suspended because of his Teamster activity. Lane said he knew nothing about this. Limbaugh then asked if he could work elsewhere during his suspension because of his family and the family bills, and Lane told him it was against company policy to work for another employer while working for Respondent. Limbaugh testified that Lane then suggested that he resign. Lane's testimony is that this was the suggestion of Limbaugh who said "I think I will just resign." I accept Limbaugh's version as the true one. Lane proceeded to type up a letter of resignation and Lane, according to Limbaugh, said, "Well, just go ahead and sign this letter." According to Lane he asked Limbaugh if that is what he wanted to do. Limbaugh signed, stating that he hated to lose all his seniority at Red Ball.

Conclusions

Respondent contends that Limbaugh's termination was by way of resignation. The General Counsel contends it was a constructive discharge. I agree. Lane's refusal to give Limbaugh any idea of how long his suspension might be, when he knew that it probably would take no more than 24 hours, coupled with his refusal to permit him to work elsewhere while suspended and his failure to tell him that an employee was paid during such a suspension, was designed in my opinion to force Limbaugh's resignation. I find significant Lane's further testimony that he had decided not to suspend Limbaugh at all, but to issue him a warning letter instead, but did not have a chance to tell him so because Limbaugh "at that point" began to claim that the general office was "out to get him." I see no reason why Lane could not have told Limbaugh at this point or some other. His failure to do so I find was occasioned by his intention to force his quitting. Lane could not reasonably have believed that Limbaugh was voluntarily resigning,

since Limbaugh was protesting that the general office wanted to get rid of him, that he had family obligations, and that he hated to lose the seniority gained in Respondent's employ. I find that Lane's entire course of action was calculated to bring about Limbaugh's quitting, and that by so bringing it about Respondent constructively discharged him. I find that the reason for the discharge, or forced quitting, was Limbaugh's known activity on behalf of the Union to which Respondent was openly opposed.

b. Elton Cathey

Cathey came to work in September 1959, as a line driver based on Dallas. In 1961 he became active in the Teamsters' organizing drive and procured about 75 Teamster cards. It has already been found that he served as an observer for the Union at the Board election. It has also been found that at the time of the U.T.E. election one of Cathey's tachograph charts, along with charts pertaining to Hester, Hodgkins and Mayberry, was pulled "at random" from among seven to eight thousand charts, and Hester, Hodgkins and Cathey, but not Mayberry, were issued warnings for speeding.

On April 1, 1962, Cathey left Dallas on a run to El Dorado, Arkansas, via Shreveport, Arkansas. Before leaving Dallas he checked the lights, tires, wheels and fire extinguisher, and checked his tires again at Wills Point and Longview, Texas. At Shreveport he dropped his trailer and picked up another, and again checked his tires. About 70-75 miles past Shreveport, the dual outer drive wheels on the right side of the tractor suddenly came off, one of them rolling off the highway into a parked car, damaging it to the amount of approximately \$600. Cathey was able to hold the tractor and trailer on the road and bring it to a stop. He called Nethercutt, Shreveport terminal manager, who sent another tractor to haul the trailer to El Dorado. On the following day he was dispatched on a regular run to Dallas where, on April 5, Barr called him to his office.

Barr asked Cathey about the accident on April 1, and Cathey gave him an account of it. Barr showed him a bulletin issued to drivers and said that it required drivers to check their wheels and lugs every 75 miles. Cathey denied that the bulletin said anything about wheels or lugs, and the bulletin itself, in evidence supports Cathey. It is entitled "Tire Fires" and deals solely with their prevention and with methods of fighting them, principally by keeping them properly inflated, and asks for the "cooperation of all of our line drivers in checking their tires prior to departure and every 50 to 75 miles while enroute between terminals."

After reading the bulletin to Cathey, Barr asked him how long he had driven the trailer on his April 1 trip without checking it. Cathey's testimony is that he checked his tires when he picked up the trailer at Shreveport, and so told Barr. Barr's testimony is that he asked Cathey if he had checked his wheels and tires before leaving Shreveport and that Cathey replied that he had not, stating "I just guess I goofed."

Barr's further testimony is: "I told him I would have to think about it for a little while. And I thought it over." But not for long, for then Barr asked Cathey to resign and when he refused told him he was discharged. Barr's further testimony is that he offered to call the U.T.E. representative but Cathey said that would do him no good, and left, and that he did not see Cathey again until the hearing. After that he had left, Barr says that he called House, U.T.E. representative, and told him what had occurred.

Cathey's testimony, however, is that after he left Barr's office he went to the dispatcher's office where he called House on the telephone and asked him to come down. Then Barr passed the door to the dispatcher's office and summoned Cathey over to the main office where he gave Cathey his final paycheck. At about that time House arrived. Cathey told him he was discharged and House suggested that they go in to Barr and see if anything could be done. In Barr's office House asked Barr to reconsider the dis-

charge and Barr said, still according to Cathey's testimony, "Well, he's done admitted it," and Cathey said, "Wait, I ain't admitted anything." Cathey's testimony is that he then repeated his account of this accident to House and Barr together and asked Barr why, if he was such a bad risk, he had been dispatched, following the accident on his trip to Dallas and that Barr replied that he was waiting until he got to Dallas. Cathey then said, "In other words, you knew you were going to fire me when you talked to those people," and, "If I hadn't gotten around to Dallas I might have had another day or two's work," to which Barr said, "That is right . . . I was going to fire you when you got into Dallas whether it was Thursday or Wednesday morning," and concluded, "This case is closed as far as I'm concerned." House then left and Cathey went with him.

I have related this testimony, circumstantially given, at some length since Barr's account is silent as to any conversation between himself, Cathey, and House, who was not called as a witness. Barr's testimony, as I have found, is that after Cathey had left his office when told he was discharged he did not see Cathey again until the hearing. I credit Cathey's testimony as to the conversation between him, Barr and House, and I conclude that Barr's memory was faulty. For this reason, among others, I do not credit Barr's testimony that Cathey told him that he had not checked his tires *at Shreveport*, and instead I credit Cathey's testimony that what he told Barr was that he had not checked them *after leaving* Shreveport. I have accepted Cathey's testimony that he did check them at Shreveport.

Cathey's testimony as to what was said after House was called in is of further importance in that Barr admitted to Cathey that he had decided to discharge him before he had talked with him. Hence the discharge would not have been affected by any statement by Cathey, even had it been made, that he had not checked his tires at Shreveport. Moreover, it contradicts Barr's statement on the stand that

he decided to discharge Cathey during his interview on April 5.

Barr may, however, have believed that Cathey had not inspected his tires because, had he done so, the accident would not have happened. Sanders, shop foreman, testified that the holes in the wheels into which the studs fitted were elongated to twice their normal size, which indicated to him that the wheels had wobbled because the nuts were loose, permitting the wheels to have free movement against the studs, and that one can see when the nuts are loose on the bolts by looking at the wheels. Cathey's testimony was that the nuts in question cannot be seen by looking at the outside of the outer wheels, but only when the outer wheels are first removed.

Respondent insists that even if these nuts cannot be seen if they are loose the wobbling of the wheels can be felt by an experienced driver, and contends that if Cathey had checked his tires at Shreveport he would have seen that the nuts were loose.

Conclusions

Cathey was not discharged by Respondent for having an accident but, according to its brief, for the "sole and simple reason that he had neglected to check his equipment." I have found that he did inspect his tires before leaving Dallas, twice again before arriving at Shreveport, and again before leaving Shreveport. The accident in question occurred less than 75 miles after leaving Shreveport, within the distance allowed by the "Tire Fire" bulletin. The bulletin itself does not set forth a company rule. It only "asks for the cooperation" of the drivers. It pertains to tires only, which can be seen, and requires that they be properly inflated.

It has nothing to do with inspection of the wheels themselves to discover mechanical faults. This is the responsibility of the service department. Nor am I convinced that loose nuts on the type of equipment in question can be seen

when the tires are looked at, or that vibration of the tractor is necessarily caused by loose nuts or that it can be felt by the driver.

The record shows that Barr had determined to discharge Cathey before he talked to him. In my opinion this decision was not based upon the accident on April 1, but upon Cathey's extensive and well known activity in behalf of the Union, and I so find.

3. Terminations for other causes

a. Joe Shamblin

Shamblin started work in April 1957 as a pickup and delivery driver in Dallas. He was a committeeman for the U.T.E. in 1958, and a councilman in 1959. In 1960 he was appointed treasurer of U.T.E. by Craig, and in 1961 he was elected to that office. In October of that year he sent a letter to Craig, with a copy to Respondent, protesting the way in which the U.T.E. was being run. On October 15 he was expelled by the U.T.E. Thereafter he became active in the Union and was designated union steward at the Dallas dock, and later an observer at the Board election. A short while before the election Fisk, Respondent's vice president in charge of operations, spoke to a meeting of employees at which he praised the U.T.E. and attacked the Teamsters. Shamblin's testimony, admitted by Fisk to be correct in substance, is that he arose and took exceptions to certain of Fisk's statements. After the meeting Fisk detained him and told him that he could not understand what was wrong with him and Shamblin answered that his "problem" was with the U.T.E. and the working conditions. Fisk suggested that if Shamblin wanted the Teamsters he would help him get transferred to the Denver division where Respondent had a contract with that union. Shamblin declined the offer, stating that he would stay in Dallas and work under a Teamster contract there.

On March 28, the day following Limbaugh's discharge,

discussed above, Shamblin and several other employees were talking about the discharge in the yard when Fisk and Lane approached and asked what was going on. When Shamblin said they were talking about his pickup truck, Fisk admittedly said, "Don't kid me, Joe. You're out here with that Teamster trouble-making business," and asked Shamblin what was wrong. Shamblin replied that the drivers were dissatisfied with the working conditions and did not like Limbaugh's being discharged. As Fisk and Shamblin walked away Fisk again suggested that Shamblin quit, and Shamblin again declined, adding that it was like a dictatorship at Red Ball and that it should move to Cuba. On April 6, during a conversation in Lane's office, Lane criticized Shamblin for making remarks about Henry English, Respondent's principal owner, and told him he was causing trouble among the drivers and that the U.T.E., not Shamblin, represented them. Shamblin accused English of being "part of a fake union." Lane suggested that Shamblin quit, told him that there would have to be a change in his attitude, and instructed him to leave the premises when he got off work at the end of the day.

Later in April Shamblin was switched from his job, principally that of picking up and delivering straight loads of freight, and made a "hot shot" driver handling LTL¹⁷ shipments. This involved the handling of smaller and more varied consignments. Shamblin had previously bid on this job and the transfer is not alleged to have been discriminatory. On April 25 Shamblin made his last pickup of the day at Western Electric Company warehouse, just before the closing hour of 4:30 p.m. This consisted of between 12 and 20 different shipments of 200 or more cartons. When the shipments had been loaded Shamblin found that a shipment to Port Arthur was missing. Shamblin was told that the warehouse was closing and to take the load to Red Ball's dock and if it was found to be a shipment short to pick it up on his run the next morning. The next morning the

¹⁷ Less than truck load.

missing shipment, comprising 15 cartons, was found placed to one side in the Western Electric warehouse. Shamblin called Hitt, Respondent's break-out foreman, to see if this shipment checked with the bill of lading and Hitt told him to bring it in, which he did. Shamblin heard nothing more about this until his discharge on May 2.

On May 1 Shamblin had a pickup at White's Auto Store warehouse involving 8 to 15 separate shipments of 300 to 400 cartons. Although Shamblin receipted for all the merchandise he did not receive six tires and a sign.

The 15 carton Western Electric shipment of April 25 came to Lane's attention through a spot check of OS & D¹⁸ reports on May 1. Lane testified that this lapse of time was due to the fact that there were 80 to 100 OS & D reports each day, and that usually such reports came to his attention through tracing of a shipment from the destination station after a failure by the consignee to receive it. Lane called Shamblin and criticized him with respect to the shipment, and Shamblin explained the circumstances. Lane said that Shamblin was "making trouble on the dock" and again suggested that he resign. On the following day, May 2, Lane prepared a letter to Shamblin reprimanding him on account of the Western Electric shipment and his attitude toward Respondent, and warning him that if he did not improve he would face discharge.

After its preparation, but before its delivery, the White Auto Supply incident came to Lane's attention. Lane called Shamblin in, told him he had just found out about the White matter, and discharged him. Simultaneously with telling Shamblin he was discharged Lane handed him the warning letter which he had prepared. Lane testified that during his 6 months at Dallas Shamblin was the only driver whom he discharged for failing to pick up or deliver merchandise. The record does not show that any other driver was ever discharged for this reason.

¹⁸ Over, short, or damaged.

Conclusions

In my opinion Respondent's complaint as to the 15 cartons at Western Electric approaches the trivial. The absence of the cartons was discovered by Shamblin himself, Respondent knew where they were, and no tracing was necessary though Lane testified that usually such shortages were discovered only after a consignee's failure to receive and subsequent tracing. The White incident is of little higher stature. The absence of the six tires and sign was not discovered by Shamblin but by a trace, and a special run was necessary to get the articles delivered the same day. Shamblin, however, had been only a few days on this run and was unused to handling large numbers of individual items in numerous shipments. Neither matter involved any actual loss to Respondent. Shamblin testified credibly that he himself had on at least six occasions picked up shipments overlooked by other drivers. Lane's own testimony is that there are 80 to 100 OS & D reports each day at the Dallas terminal alone, and that of these 40 to 50 are shortages, a number of them due to the failure of drivers to pick up shipments.

Shamblin, as a councilman, committeeman, and treasurer of U.T.E. had been in open opposition to Craig's administration of that organization, and Respondent knew it. When the U.T.E. expelled him he became active in the Teamsters organizing drive, possibly its most active proponent. He repeatedly made clear to Respondent's officials his dissatisfaction with working conditions at Red Ball and its relationship to the U.T.E., and they made equally clear to him their dissatisfaction with his Teamster activities and their desire to be rid of him. First, Respondent attempted to persuade him to transfer to Denver where he would be under a Teamster contract and removed from the employees he was attempting to organize. This failing, they urged him unsuccessfully and on repeated occasions to quit his employment. Finally they discharged him. Respond-

ent's eagerness to be rid of Shamblin is illustrated by the fact that Lane did not wait for his warning letter to take effect, but discharged him simultaneously with delivering it, on the pretext afforded by the White shipment. He was the only pickup and delivery driver Lane discharged in the Dallas terminal while he was terminal manager,¹⁹ and there is no evidence that anyone else in the entire system was ever terminated for this reason. I find that Shamblin's discharge was caused by Respondent's opposition to the Union and Shamblin's activities in its behalf.

b. Henry Lewis

Lewis was employed in January 1957, and worked on the Dallas dock. In 1959 he was transferred to Shreveport, Louisiana, where he was an over-the-road driver. He became active in the Teamsters in late 1960, and obtained signatures of drivers to Teamster petitions. On May 2, 1961, he was called to the office of Scruggs, central dispatcher, and in Barr's presence told about a trailer which he had dropped on a gravel lot at Greenville, Texas, without putting a dollie under it to prevent its sinking into the ground. It is not asserted that it did sink. Scruggs used the occasion to say that Lewis had been seen causing trouble among the drivers and had been telling them they had "run arounds"²⁰ coming to them. Scruggs testified that a number of unjustified complaints had come to him of "run arounds" and he had traced their source to Lewis. Scruggs then composed a letter to Lewis placing him on probation for a year "to the extent that any further act of negligence or indication of poor judgment on your part will result in your immediate dismissal."

In January 1962, Lewis made a run from Shreveport to

¹⁹ If respondent had been genuinely concerned by Shamblin's performance it could have transferred him back to his previous run.

²⁰ A run around is dispatching a man out of order, instead of "first in, first out."

Sherman, Texas, via Paris. While in Paris, Lewis saw a shipment of school supplies destined for Sherman which he had not been instructed at Shreveport to pick up, and asked the dock foreman if he should put the supplies in his trailer. The foreman told him not to do so, that another driver had been dispatched to pick them up. When he got to Sherman, Alred, Respondent's agent there, asked him if he had the supplies and Lewis told him that he had been instructed by the dock foreman at Paris not to take them in his trailer. Alred called Scruggs who told him to have Lewis either to go back to Sherman and pick up the shipment, without pay, or to catch the bus and go home. Lewis made the trip to Paris and brought the supplies to Sherman. When he got back to Shreveport, Lane told him that he was careless in not picking up the supplies at Paris, and that he did not use his judgment, although it was as much the fault of the dock foreman as it was his. Nevertheless, he prepared a statement which he said Lewis did not have to sign "but if you don't sign this, this is it." Lewis signed. The statement is as follows:

My duties as a line driver—specifically my responsibility is moving freight from local stops or warehouse on my specific run [illegible]. It was pointed out that any future poor judgment in failing to move local freight or any poor judgment reflecting negligence in performing my duties would be followed by my immediate discharge from the service of the company. Specific references is made to my trip of 1/11/62 through Paris, Texas, where I failed to use judgment in moving freight from Paris to Sherman, Texas.

Lane did not testify as to this conversation with Lewis. I construe his statement that if Lane did not sign the statement "this is it," to mean, as Lewis himself understood it, that he would be discharged.

On Sunday, March 11, 1962, Lewis was dispatched to pick up a load of rolls of paper at Ludlow Plastics in Homer, Louisiana. The load consisted of 30 rolls weighing

39,364 pounds. Lewis' uncontroverted testimony is that he and two employees of Ludlow rolled about 15 rolls on the trailer when it was found they would not fit, so the rolls were rolled off and a forklift truck was used to set them up in the trailer. Lewis helped roll the paper on and off the truck. Whether he helped with the forklift truck is not clear. On his log Lewis showed the pickup of the 39,364 pounds, and a claim for tonnage pay at $2\frac{1}{2}$ cents per hour. Since no dock foreman or dispatcher was present at Ludlow, he had his log initialed (H. B.) by another driver. Several days after Lewis submitted his log for examination and payment, he received a letter from Dale Scruggs, director of transportation, asking if he had actually helped load the paper, and who approved the tonnage figure, since he did not know who H. B. was. Lewis replied on the face of the letter that he had in fact helped load, and returned the letter to Prince, Shreveport dock foreman, who forwarded it to Lane. Prince wrote on the bottom of the letter that he had approved Lewis' claim on a tonnage basis. He based his approval on Lewis' statement that he helped load.

Lewis was never paid for helping load on either a tonnage or hourly basis. It is agreed that payment on a tonnage basis would have been \$1.88 more than on an hourly basis.

On March 27 Scruggs called Lewis to Dallas at Lewis' own expense and on March 28 talked with him. He accused Lewis of not having helped to load the trailer and stated that he had a letter from Ludlow to that effect. He did not produce it. Nor was it produced at the hearing. Alternately, Scruggs said that Lewis' claim should have been on an hourly basis. Scruggs characterized the claim as dishonest, gave Lewis a chance to resign, and when he refused to do so discharged him. On the following day Scruggs wrote Lewis stating he had been discharged because "subsequent investigation" revealed he had not assisted in the loading, and because he had been put on probation for a year on May 1, 1961, and warned in January 1962.

Conclusion

Respondent's whole course of conduct toward Lewis convinces me, and I find, that it discharged him on May 28, 1962, because of his activity on behalf of the Teamsters and not, as it claims, for legitimate business reasons. In pursuit of this aim and purpose it first made the probationary conditions (any further act of negligence or indication of poor judgment), such that no employee could reasonably be expected to meet them since they were undefined, and in the background context included not placing a dollie under a truck, and not talking to fellow drivers. The only other instance of asserted negligence or poor judgment prior to the Ludlow plant loading was his not taking the school supplies from Paris to Sherman. It is uncontroverted that Lewis himself asked the dock foreman at Paris if he should do so, and was instructed that he should not, and that another driver was scheduled to do so. I am at a loss to understand how this can be said to constitute negligence or poor judgment, or what Lewis could conceivably have done short of defying supervisory authority and disrupting Respondent's transportation schedules. Since Lane did not testify on the point I am without the benefit of his opinion. But he did admit to Lewis, an admission which I regard as something of an understatement, that the dock foreman was partly at fault. It does not appear, however, that the dock foreman was in any way reprimanded. Instead, Lane caused Lewis to sign a self-incriminating statement under what was in effect a threat of discharge in an endeavor, as I view it, to prepare a case against him. He was made to confess, specifically, that he used poor judgment at Paris, and to acknowledge that a similar lack of judgment in the future would cause his discharge.

The future was not long coming. On March 28 Lewis reported that he had loaded freight at the Ludlow dock and claimed pay on a tonnage rather than on an hourly basis. The difference was \$1.88 in his favor. This does not seem to have been the complaint against him, however, but rather

that he did not help in the loading. This is the basis on which Lane put the matter in the discharge letter. Lewis testified that he did help load, and there is no evidence to the contrary, though other witnesses were available in the persons of Ludlow's dock employees. Lane asserted that he had a letter to that effect, but did not offer to show it to Lewis. Nor did Respondent produce it at the hearing, or make any showing that it was not available.

I conclude and find that Respondent discharged Lewis not for legitimate business reasons but because of his activity in behalf of the Teamsters.

c. William Clem

Clem started to work as a mechanic third class in the trailer shop under Harold Odum, maintenance supervisor. In the fall of 1961 he became active in signing up employees for the Teamsters. Together with Hodgkins and Shamblin he acted as a union observer at the election. He testified that after the election he received less overtime than formerly. I do not find this substantiated by the record.

Clem testified that the day following the election when he was sitting with Olswaski, trailer shop foreman, and several other employees in the coffee shop, Olswaski addressed him as a "no-good-so-and-so-Teamster" and that the Teamsters "ought to be whipped or shot," and said that the Company felt the same way about it and that Odum and Fisk were going to get rid of Clem. Olswaski and others named by Clem as present on this occasion, testified that Olswaski said nothing at all to Clem about the Teamsters. I credit their testimony. On December 5, Clem resigned his membership in the U.T.E.

In January Clem was called to Odum's office and criticized for creating dissension and spreading rumors to the effect that newly hired employees were being given higher classifications than others already employed. Moudy, a driver who was concerned about the rumors, was present.

Several weeks later, Clem testified, he was again called to the office where Odum, in Moudy's presence, again accused Clem of stirring up trouble, and called someone on the phone to whom he said "yes, sir," and "no, sir," and told this person that he was discharging Clem. On turning from the telephone he told Clem that he was giving him another chance. This conversation was denied by Odum. Moudy testified that he had been present on only one occasion where Clem was present, that previously related. I accept Odum's testimony and that of Moudy as in accord with the facts.

On February 5, Odum offered Clem a job in Respondent's Denver terminal, but he refused it.

In mid-April Respondent laid off six employees in the shop, including Clem. It is not contended by the General Counsel that the decision to lay off was other than economically motivated. When Odum told the group of employees that they were being laid off Clem, according to his testimony, raised the question of bumping to another job and said that he was going to bump, and Odum said he could not bump because he was not a member of the U.T.E. The testimony of Odum and the others present was that the question of bumping was raised by Moudy, or some other employee, but not by Clem, and that Odum said that anyone who had the right to bump could do so. According to these witnesses it was Clem who announced that the others had the right to bump, but that he did not because he was not a member of U.T.E. I accept their account of the conversation as accurate, and find that Odum did not say that Clem could not bump.

The fact is that the U.T.E. contract gives the right to bump when seniority is sufficient. It is conceded that Clem was eligible to bump, along with one other employee, if he had demanded it. The other eligible employee did not want to bump. It is also clear that Odum knew of Clem's right, but that Clem did not. Odum's testimony was as follows:

Q. Who brought up the subject of bumping? A. Clem.

• • • • •

Q. What was Clem's statement? A. He didn't have a bump coming because he did not belong to the U.T.E.

Q. Did you say anything when Mr. Clem made the statement. A. No, sir.

Q. Was Mr. Clem's statement a true statement? A. No, sir.

Conclusions

The question presented is whether Odum's admitted failure to tell Clem that he could bump to another job when he knew that Clem was under the mistaken belief that he could not, was motivated by Clem's known activity in behalf of the Teamster's and Respondent's hostility to it. On a previous occasion Odum had tried to persuade Clem to transfer to Denver, and he had refused. His failure to bump had the same result that a transfer to Denver would have had; it removed him from the union activities in Respondent's Dallas shop. If Clem had not been an advocate of the Teamsters, Respondent's antipathy to which is amply demonstrated, among other things, by its termination of six other of its most active proponents, would Odum have interposed to advise Clem of his right to bump when it was obvious that he was ignorant of this right? The answer is not without difficulty, but I believe that it must be in the affirmative. Ordinary fair dealing between employer and employee would have dictated it. Here this fair dealing was withheld, in my opinion, because of Clem's union activity, and I so find. His termination constituted a constructive discharge.

Concluding Findings

I find that Gordon Hodgkins, W. T. Willingham, Horace Limbaugh, Elton Cathey, Joe Shamblin, Henry Lewis, and

William Clem were discharged by Respondent in violation of Section 8(a)(3) and (1) of the Act.

c. Alleged harassing

The complaint alleges that Respondent discriminated against driver Hall Nichols in violation of Section 8(a)(3) and (1) of the Act by, since December 2, 1961, singling him out for special checks and issuing warning notices for alleged violation of rules.

Nichols has worked since 1956 as a line driver out of the Houston Terminal. In 1960 he joined the Teamsters, became active in its affairs, and was an observer at the Board election. This was known to Respondent.

On a run between Houston and Paris, in March 1962, Barr followed his trailer for about an hour and a half. Again on May 8, 1962, Barr followed Nichols while he was driving between 40 and 50 miles per hour on a freeway within the city limits of Dallas where the posted speed limit was 50 miles per hour. When Nichols got back to the Houston Terminal, Barr told Nichols that he would not tolerate speeding in cities, and on the following day gave him two warning notices, one for failure to follow instructions and the other for speeding. The first was based upon Barr's injunction at a safety meeting a day or so before, against exceeding the speed limit within a city. Hence Barr considering this a flagrant violation, warranting two notices. Respondent insists that the State speed limit for trucks is 45 miles per hour, and that this also applies to trucks within a city, even when the posted speed limit is 50 and says nothing about trucks. Barr testified elsewhere, however, that he had told drivers to follow the posted speed limit in towns. There is no explanation for this contradiction.

I do not find, however, that Respondent harassed Nichols by following him twice within a 3-month period, and on one occasion giving him two notices instead of the usual one. This allegation of the complaint is hereinafter dismissed.

IV. The effect of the unfair labor practices upon commerce

The activities of the Respondent set forth in section III, above, occurring in connection with the operations of the Respondent described in section I, above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. The remedy

Having found that Respondent has engaged in the unfair labor practices set forth above, I recommend that it cease and desist therefrom and that it take certain affirmative action designed to effectuate the policies of the Act. Respondent having discharged Horace Limbaugh, Henry Lewis, Elton Cathey, William Clem, Joe Shamblin, Gordon Hodgkins and W. T. Willingham because of their membership in and support of the Teamsters, I recommend that Respondent offer them immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other rights and privileges and make them whole for any loss of pay they may have suffered by reason of Respondent's discrimination against them, by payment of a sum of money equal to that which they normally would have earned as wages from the date of their discharge to such date as Respondent shall offer them reinstatement, less their net earnings during said period. Such said backpay shall be computed on a quarterly basis in the manner established by the Board in the *F. W. Woolworth Company*, 90 NLRB 289, 291-294, and with interest thereon, at the rate of 6 percent per annum as prescribed by the Board in *Isis Plumbing & Heating*, 138 NLRB No. 97.

As the unfair labor practices committed by Respondent are of a type which strike at the very roots of employee

rights safeguarded by the Act, I shall recommend that Respondent be ordered to cease and desist from infringing in any manner upon the rights guaranteed in Section 7 of the Act.

Conclusions of Law

1. The Union is a labor organization within the meaning of the Act.

2. Red Ball Motor Freight, Inc., is engaged in commerce within the meaning of the Act.

3. By discriminating with respect to the hire and tenure of employees, thereby discouraging membership in the Union, Respondent has engaged in unfair labor practices within the meaning of Section 8(a)(3) and 8(a)(1) of the Act, thereby violating Section 7 of the Act.

4. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

5. The Respondent has not violated Section 8(a)(3) and (1) of the Act by discriminating against Hall Nichols.

RECOMMENDED ORDER ²¹

Upon the basis of the foregoing findings of fact and conclusions of law and upon the entire record in this case, it is recommended ²² that Respondent, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Discouraging membership in and activities on behalf of the Union or any other labor organization of its em-

²¹ In the event that this Recommended Order be adopted by the Board, the word "Order" shall be deemed substituted for the words "Recommended Order."

²² In the event that this Recommended Order be adopted by the Board, the word "ordered" shall be deemed substituted for the word "recommended."

ployees, by discharging any employee, or in any other manner discriminating in regard to hire or tenure of employment, or any term or condition of employment.

(b) In any other manner interfering with, restraining, or coercing its employees in the exercise of their right to self-organization, to form, join, or assist labor organizations, including the above-named labor organization, to bargain collectively through representatives of their own choosing, or to engage in other concerted activities for the purpose of collective bargaining or mutual aid or protection, or to refrain from any or all such activities except to the extent that such right may be affected by an agreement authorized by Section 8(a)(3) of the Act, as modified by the Labor Management Reporting and Disclosure Act of 1959.

2. Take the following affirmative action designed to effectuate the policies of the Act:

(a) Offer to Horace Limbaugh, Henry Lewis, Elton Cathey, William Clem, Joe Shamblin, Gordon Hodgkins and W. T. Willingham immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority and other rights and privileges.

(b) Make whole Horace Limbaugh, Henry Lewis, Elton Cathey, William Clem, Joe Shamblin, Gordon Hodgkins and W. T. Willingham for any loss of pay they may have suffered by reason of the discrimination against them, by payment to each of them of a sum of money equal to the amount he normally would have earned as wages from the date of his discharge to the date of Respondent's offer of reinstatement in the manner set forth in the section entitled "The remedy."

(c) Preserve and make available to the Board and its agents, upon request, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records relevant or necessary to the determination of backpay due and

to the reinstatement and related rights provided under the terms of this Recommended Order.

(d) Post at all its terminals copies of the notice attached herto and marked Appendix.²³ Copies of said notice, to be furnished by the Regional Director for the Twenty-third Region, shall, after being signed by Respondent's Representative, be posted by Respondent immediately upon receipt thereof and maintained by it for 60 consecutive days thereafter in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that said notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director for the Twenty-third Region, in writing, within 20 days from the date of this Recommended Order, what steps the Respondent has taken to comply herewith.²⁴

It is recommended that the complaint be dismissed insofar as it alleges discrimination against Hall Nichols.

Dated at Washington, D. C. Mar 5 1963

HORACE A. RUCKEL, Trial Examiner

²³ In the event that this Recommended Order be adopted by the Board, the words "A DECISION AND ORDER" shall be substituted for the words "A RECOMMENDED ORDER OF A TRIAL EXAMINER" in the notice. In the further event that the Board's Order be enforced by a decree of a United States Court of Appeals, the words "A DECREE OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER" shall be substituted for the words "A DECISION AND ORDER."

²⁴ In the event that this Recommended Order be adopted by the Board, this provision shall be modified to read: "Notify said Regional Director in writing within 10 days from the date of this Order what steps the Respondent has taken to comply herewith."

APPENDIX

NOTICE TO ALL EMPLOYEES

PURSUANT TO

THE RECOMMENDED ORDER OF A
TRIAL EXAMINER

of the National Labor Relations Board, and in order to effectuate the policies of the National Labor Relations Act, we hereby notify our employees that:

WE WILL offer Horace Limbaugh, Henry Lewis, Elton Cathey, William Clem, Joe Shamblin, Gordon Hodgkins and W. T. Willingham immediate and full reinstatement to their former or substantially equivalent positions without prejudice to their seniority or other employment rights and privileges; and make them whole for any loss of pay they may have suffered by reason of the discrimination against them.

WE WILL make whole Horace Limbaugh, Henry Lewis, Elton Cathey, William Clem, Joe Shamblin, Gordon Hodgkins and W. T. Willingham by paying to each a sum of money equal to each such employee's loss of pay suffered as a result of the Respondent's discrimination against each employee.

WE WILL NOT discourage membership in or activities on behalf of GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 968; DALLAS GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS LOCAL UNION NO. 745; TRUCK DRIVERS AND HELPERS LOCAL NO. 568, ALL AFFILIATED WITH THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA, or any other labor organization of our employees, by discharging, or otherwise discriminating in regard to the hire and tenure of any employee's employment or any term or condition of employment.

WE WILL NOT in any other manner interfere with, restrain, or coerce our employees in the exercise of

their right to self-organization, to form labor organizations, to join or assist the above-named labor organizations, or any other labor organization, to bargain collectively through representatives of their own choosing and engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection or to refrain from any or all such activities.

All our employees are free to become and remain, or to refrain from becoming or remaining members of, any labor organization except to the extent that such right may be affected by an agreement authorized by Section 8(a)(3) of the Act as modified by the Labor Management Reporting and Disclosure Act of 1959.

RED BALL MOTOR FREIGHT, INC.
(Employer)

Dated	By	(Title)
	(Representative)	

NOTE:—We will notify any of the above-named employees presently serving in the Armed Forces of the United States of their right to full reinstatement upon application in accordance with the Selective Service Act after discharge from the Armed Forces.

This notice must remain posted for 60 consecutive days from the date of posting, and must not be altered, defaced, or covered by any other material.

Employees may communicate directly with the Board's Regional Office, 6617 Federal Office Building, 515 Rusk Avenue, Houston 2, Texas (Tel. No. Capitol 8-0611, Ext. 296), if they have any question concerning this notice or compliance with its provisions.

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

RED BALL MOTOR FREIGHT, INC.

and

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS LOCAL UNION No. 968; DALLAS
GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION No. 745; TRUCK
DRIVERS AND HELPERS LOCAL UNION
No. 568, ALL AFFILIATED WITH THE IN-
TERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN
AND HELPERS OF AMERICA

Case No.
23-CA-1435

DECISION AND ORDER

On March 5, 1963, Trial Examiner Horace A. Ruckel issued his Intermediate Report in the above-entitled proceeding, finding that the Respondent had engaged in and was engaging in certain unfair labor practices and recommending that it cease and desist therefrom and take certain affirmative action, as set forth in the Intermediate Report attached hereto. He also found that the Respondent had not engaged in certain other alleged unfair labor practices and recommended dismissal of these allegations of the complaint. Thereafter, the Respondent and the General Counsel filed exceptions to the Intermediate Report and supporting briefs.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its powers in connection with this case to a three-member panel.

The Board has reviewed the rulings of the Trial Examiner made at the hearing and finds that no prejudicial error was committed. The rulings are hereby affirmed. The Board has considered the Intermediate Report, the exceptions and briefs, and the entire record in the case, and

hereby adopts the findings, conclusions, and recommendations of the Trial Examiner.

143 NLRB No. 32

ORDER

The Board adopts as its Order the "Recommended Order" of the Trial Examiner.

Dated, Washington, D. C., Jun. 26, 1963.

FRANK W. McCULLOCH, Chairman

PHILIP RAY RODGERS, Member

JOHN H. FANNING, Member

NATIONAL LABOR RELATIONS BOARD

(SEAL)

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,956

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 968; DALLAS
GENERAL DRIVERS, WAREHOUSEMEN
AND HELPERS, LOCAL UNION NO. 745;
TRUCK DRIVERS AND HELPERS
LOCAL UNION NO. 568, ALL AFFILI-
ATED WITH THE INTERNA-
TIONAL BROTHERHOOD OF
TEAMSTERS, CHAUFFEURS,
WAREHOUSEMEN AND
HELPERS OF AMERICA,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent,

and

RED BALL MOTOR FREIGHT, INC.

Intervenor.

No. 17,994

NATIONAL LABOR RELATIONS BOARD,
Petitioner,

v.

RED BALL MOTOR FREIGHT, INC.,
Respondent.

PREHEARING CONFERENCE STIPULATION AND
MOTION FOR EXTENSION OF TIME TO FILE
BRIEFS AND APPENDIX

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia Circuit:

I. MOTION FOR EXTENSION OF TIME

The parties hereto respectfully move that the time set forth for the filing of briefs and the joint appendix by Rule 18 of this Court be extended in conformity with the time stipulated below.

II. ISSUES

1. In No. 17,956 the question presented is whether the Board erred in not finding additionally that the Company violated Section 8 (a) (3) and (1) of the Act by singling driver Nichols out for special checks and/or issuing Nichols warning notices for alleged violations of Company rules, and in failing to issue a proper order to remedy said violation.

2. In No. 17,994 the question presented is whether substantial evidence on the record as a whole supports the Board's finding in each instance that the Company violated Section 8(a)(3) and (1) of the Act by discharging employees Cathey, Shamblin, Lewis, Clem, Hodgkins, Willingham and Limbaugh.

III. BRIEFS AND JOINT APPENDIX

1. The record in this case shall be reduced to a joint appendix, to be comprised of the materials each party may designate, with each party bearing the cost of printing the material contained in its designation.
2. The Union, petitioner in No. 17,956, shall serve its designation (which shall include the Decision and Order of the Board and the Intermediate Report of the Trial Examiner) on or before September 30, 1963. The Board, respondent in No. 17,956 and petitioner in No. 17,994, shall serve its designation on or before October 10, 1963. The Company, intervenor in No. 17,956 and respondent in No. 17,994 shall serve its designation on or before October 21, 1963.
3. The responsibility for printing the joint appendix shall rest with the Union, which will file the printed joint appendix on or before November 21, 1963.
4. The Union, petitioner in No. 17,956, will file its brief on or before November 12, 1963.
5. The Board, respondent in No. 17,956 and petitioner in No. 17,994, will file a single brief covering both cases on or before December 6, 1963.
6. The Company, intervenor in No. 17,956 and respondent in No. 17,994, will file a single brief covering both cases on or before December 31, 1963.
7. The Board and the Union may file reply briefs on or before January 15, 1964.
8. It is further agreed that any party or the Court, at or following the hearing in this case, may refer to any portion of the original transcript of record or exhibits herein which has not been printed, to the same extent and effect as if they had been printed, or otherwise reproduced, it being understood that any portion of the record thus referred to

will be printed in a supplemental joint appendix if the Court so directs.

MARCEL MALLET-PREVOST
Assistant General Counsel

NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C., this 1st day of October, 1963

HERBERT S. THATCHER
Counsel for Local 968

Dated at Washington, D. C., this 1st day of October, 1963

J. PARKER CONNOR
Counsel for Red Ball Motor Freight, Inc.

Dated at Washington, D. C., this 1st day of October, 1963

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION No. 968, DALLAS
GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION No. 745; TRUCK
DRIVERS AND HELPERS, LOCAL UNION
568, ALL AFFILIATED WITH THE INTER-
NATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

v.

N. L. R. B.

N. L. R. B.

v.

RED BALL MOTOR FREIGHT, INC.

No. 17,956

No. 17,994

Before: Wilbur K. Miller, Circuit
Judge, in Chambers.

PREHEARING ORDER

On consideration of the prehearing stipulation and motion for extension of time to file briefs and appendix, submitted by the parties in the above-entitled cases, it is

ORDERED that the motion be granted, and the stipulation is hereby approved, and it is

FURTHER ORDERED that the stipulation shall control further proceedings in this case unless modified by further order of this court, and that the stipulation and this order shall be printed in the joint appendix of the parties herein.

Dated: October 10, 1963

BRIEF FOR THE NATIONAL LABOR RELATIONS
BOARD

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17956

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS,
LOCAL UNION No. 968, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT
AND
RED BALL MOTOR FREIGHT, INC., INTERVENOR

No. 17994

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

RED BALL MOTOR FREIGHT, INC., RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE THAT PART OF AN
ORDER OF THE NATIONAL LABOR RELATIONS BOARD DISMISS-
ING A PORTION OF THE COMPLAINT AND ON PETITION TO
ENFORCE THAT PART OF THE SAME ORDER REMEDYING UN-
FAIR LABOR PRACTICES

ARNOLD ORDMAN,

General Counsel,

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Attorneys,

National Labor Relations Board.

United States Court of Appeals

for the District of Columbia Circuit

FILED

DEC 10 1963

Nathan J. Paulson
CLERK

STATEMENT OF QUESTIONS PRESENTED

1. In Case No. 17956 the question presented is whether the Board erred in not finding additionally that the Company violated Section 8(a) (3) and (1) of the Act by singling out driver Nichols for special checks and for issuing Nichols warning notices for alleged violations of Company rules, and in failing to issue a proper order to remedy said violation.

2. In Case No. 17994 the question presented is whether substantial evidence on the record as a whole supports the Board's finding in each instance that the Company violated Section 8(a) (3) and (1) of the Act by discharging employees Cathey, Shamblin, Lewis, Clem, Hodgkins, Willingham and Limbaugh.

(1)

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17956

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS,
LOCAL UNION No. 968, ET AL., PETITIONERS

v.

NATIONAL LABOR RELATIONS BOARD, RESPONDENT

AND

RED BALL MOTOR FREIGHT, INC., INTERVENOR

No. 17994

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

RED BALL MOTOR FREIGHT, INC., RESPONDENT

ON PETITION TO REVIEW AND SET ASIDE THAT PART OF AN
ORDER OF THE NATIONAL LABOR RELATIONS BOARD DISMISS-
ING A PORTION OF THE COMPLAINT AND ON PETITION TO
ENFORCE THAT PART OF THE SAME ORDER REMEDYING UN-
FAIR LABOR PRACTICES

BRIEF FOR THE NATIONAL LABOR RELATIONS BOARD

JURISDICTIONAL STATEMENT

Case No. 17956 is before the Court on the petition
of General Drivers, Warehousemen and Helpers, Lo-
cal Union No. 968, *et al.* (hereinafter called the

Teamsters or the Union) to review and set aside that part of the Board's order (J.A. 419-425)¹ issued on June 26, 1963, against Red Ball Motor Freight, Inc. (hereinafter called the Company) dismissing a portion of the complaint. Case No. 17994 is before the Court on the Board's petition to enforce the remainder of its order. The Board's Decision and Order is reported at 143 NLRB No. 32. This Court has jurisdiction under Sections 10 (e) and (f) of the National Labor Relations Act, as amended (61 Stat. 136, 73 Stat. 519, 29 U.S.C. Secs. 151 *et seq.*). No jurisdictional issue is presented.

I. The Board's findings of fact and conclusions of law

Briefly, the Board found that the Company violated Section 8(a) (3) and (1) of the Act by terminating the employment of drivers Cathey, Hodgkins, Lewis, Limbaugh, Shamblin and Willingham, and mechanic Clem because of their activities on behalf of the Union (J.A. 416-419). The Board dismissed that portion of the complaint which charged that the Company violated Section 8(a) (3) and (1) of the Act by discriminatorily subjecting driver Nichols to special surveillance and by issuing him two warning letters for a single infraction of the Company's rules (J.A. 417). The Board's findings rest upon the following evidentiary facts:

¹ "J.A." references are to the pages of the joint appendix printed pursuant to the rules of this Court and the stipulation of the parties. Wherever in a series of references a semicolon appears, the references preceding the semicolon are to the Board's findings; those following the semicolon are to the supporting evidence. "S.A." references are to the Board's supplementary appendix, printed at the end of this brief.

A. Background

The Company is a Delaware corporation which operates as a common carrier of freight by motor vehicle in the southern and southwestern portions of the United States. The Company's general offices are located in Dallas, Texas² (J.A. 385).

The Union has been attempting to organize the Company's drivers for many years. In 1948, following charges filed by the Union, the Board found that the Company and several other trucking companies had violated Section 8(a) (2) and (1) of the Act by dominating and controlling an organization called the National Association of Motorized Common Carrier Truck Line Employees, which purported to be the collective bargaining representative of the companies' employees. The Board ordered the disestablishment of the Association. The Board further found that H. E. English and O. B. English, doing business as Red Ball Motor Freight Lines, had violated Section 8(a) (3) and (1) of the Act by discharging an employee because of his union activities. The Board also found that one R. S. Craig had been authorized by the Company to form the Association. *Red Arrow Freight Lines, Inc. et al.*, 77 NLRB 859, enforced 180 F. 2d 585 (C.A. 5), cert. denied, 340 U.S. 823. Sometime following the disestablishment of the Association, Craig formed the Union of Transportation Employees (U.T.E.) which became and is presently the collective

² The activities involved in these proceedings are limited to employees who worked out of the Dallas, Houston, and Shreveport terminals.

bargaining representative of the Company's employees (J.A. 386-387).³

Around the early part of 1961, the Union revived its campaign to oust the U.T.E. and to secure recognition as the collective bargaining representative of the Company's employees (J.A. 387). In July 1961, supporters of the Union attempted to win control of the U.T.E. by supporting the candidacy of driver James Hester, who ran for president of the U.T.E. against Craig (J.A. 387).⁴ Following the U.T.E. election, the Union resumed its organizational activities and a Board representation election was scheduled for November 30 and December 1, 1961.⁵ Commencing about one month before the election, the Company sent its employees a series of letters urging their support for the U.T.E. and the defeat of the Union (J.A. 387; 335-341). These letters, which bore the signature of Henry E. English, Chairman of the Board, stressed the pleasant association which the Company and the U.T.E. had enjoyed over the years, likened the Union campaign to Hitler's propaganda techniques, and accused the Union of being "out to destroy Red Ball and its good relationship with the Union of Transportation Employees" (J.A. 387; 337-339). At a meeting of pickup and delivery drivers in Dallas, Vice-President Charles Fisk stated that the Teamsters were

³ For a more extensive discussion relating to the circumstances surrounding the formation of the U.T.E., see *N.L.R.B. v. Red Arrow Freight Lines*, 213 F. 2d 260 (C.A. 5).

⁴ Hester lost the election and, shortly thereafter, was discharged for speeding (J.A. 387). This discharge is not involved in these proceedings.

⁵ Board Case No. 16-RC-3016.

"crooks, hoodlums and * * * a bunch of Communists" J.A. 387-388; 124). The Company also sent its employees a pictorial article from the August 18, 1958, issue of *Life Magazine* which discussed alleged criminal activities of Union officials under such headlines as "Dark and Strange Doings in Teamsters" and "Rogues Around Hoffa" (J.A. 342-345) (G.C. Ex. 11, 12, 13).

The Board election resulted in a victory for the U.T.E. and its recertification as collective bargaining representative of the Company's employees. On March 27, 1962, the Company discharged Horace Limbaugh, who had been a Teamster observer at the Board election. In the succeeding six-week period, the Company discharged six other leading Teamster adherents, five of whom had served as observers for the Union at the Board election or had been designated to serve as observers.⁶

B. The discharges

1. *Horace Limbaugh*

Limbaugh began working for the Company in 1957 at the Dallas terminal and, after a year, was given a position as pickup and delivery driver (J.A. 399; 34-35). Limbaugh received safety awards in each of the years 1958, 1959 and 1960 (J.A. 34-35). In late 1961, Limbaugh became active in the Union's organizing campaign and signed up more than 50 drivers. In October 1961, he was summoned to the office of the terminal manager, Julian Meeks, where he was ac-

⁶ Two Teamster observers were still in the Company's employ at the time of the hearing in the instant case.

cused by Foreman Jim Hitt of disobeying orders. Limbaugh denied the accusation. After discussing Hitt's charge, Meeks asked Limbaugh if he objected to answering a "personal question." Limbaugh replied that he did not. Meeks then said, "Are you for the Teamsters Union?" When Limbaugh replied in the affirmative, Meeks spoke disparagingly of the Teamsters and told Limbaugh "how crooked they were." Meeks then told Limbaugh that he had observed him signing men up for the Union and concluded the conversation by telling Limbaugh that if he disclosed this interrogation to anyone, Meeks would call [him] a liar and he would have Jim Hitt for a witness to say that it wasn't so" (J.A. 399-400; 36-37).

About two days before the election Meeks approached Limbaugh in the Company's yard and asked him if "he was still for the Teamsters Union." When Limbaugh answered that he was, Meeks replied, "I'll bet you they don't win." On the day following the election, at which he had served as a Union observer, Limbaugh approached Meeks in the latter's office and promised that he would "go on doing [his] job, performing it to the best of [his] ability and wouldn't talk union any more" (J.A. 400).

On Friday, March 23, 1962, Limbaugh, while backing his truck into a parking space, struck a delivery boy's bicycle, causing minor damage to the front wheel (J.A. 400; 40).⁷ Limbaugh promptly reported

⁷ The accident occurred because the bicycle had come up behind the truck in such a manner that Limbaugh could not

the accident to the Company's dispatch room and was told to finish his day's run (J.A. 400; 40-41).

On the following Monday, Limbaugh reported to the office of Ted Lane, the terminal manager, to discuss the accident. Lane told Limbaugh that he had had too many backing accidents and said that he was suspended pending investigation (J.A. 400; 42). Limbaugh protested that he had not been at fault in the accident but Lane repeated that he was being suspended. Limbaugh then asked, "How long are you going to suspend me for?" Lane said, "I can't tell you that." Limbaugh then said, "I've got to have some definite answer on how long I'm going to be suspended, I've got bills to pay and I need to know some date when I'll be called back." Lane replied that it was "up to the general office" (J.A. 400-401; 42-43).⁸ Limbaugh then repeated his concern with his earnings and the large number of debts with which he and his family were faced and asked Lane if he could work for another trucking company in Dallas during his suspension. Lane replied that that "would be impossible under the company's policy" (J.A. 401; 42-43, 183), and told Limbaugh that he was to report to him the following morning. During that day, Lane investigated the accident and

see it in the rear-view mirror. Respondent subsequently paid \$8.19 to have the bicycle repaired. The delivery boy was not hurt and no damage was done to the truck (J.A. 400; 40-41).

⁸ Suspensions of this type normally do not last longer than 24 hours, during which time drivers continue to receive their wages in full (J.A. 400, note 16; 189, 192-3). Although he was aware of these facts, Lane did not communicate them to Limbaugh (J.A. 400-401; 183-184, 189, 192-193).

determined that he would take no disciplinary action against Limbaugh other than to issue him a warning letter (J.A. 401; 195).

The following day Limbaugh reported to Lane's office, as he had been directed. Limbaugh informed Lane that he had been active on behalf of the Teamsters, and stated his opinion that the Company was after him because of his Union activities. Lane replied that he knew nothing about that (J.A. 401; 43). At that point, Lane suggested that Limbaugh resign. He then typed out a letter of resignation and handed it to Limbaugh, who read it and remarked that he hated to lose all his seniority at Red Ball. Lane replied, "Just go on and sign the letter, Limbaugh" (J.A. 401; 43, 196). Limbaugh signed the letter, was given his final paycheck, and left the office.

The Board concluded that Limbaugh's resignation was, in fact, a constructive discharge, and that the Company had discharged him because of his Teamster activities. Noting Lane's failure to inform Limbaugh that his suspension would probably not last beyond 24 hours, that he would be paid during the time of such suspension, and that the only disciplinary action to be taken against him would be the issuance of a warning letter, the Board found that "Lane's entire course of action was calculated to bring about Limbaugh's quitting" (J.A. 401-402).

2. Henry Lewis

Lewis began work for the Company in 1957. In 1959, he was made a line (over-the-road) driver (J.A. 410; 81-82). Late in 1960 and throughout

1961, he was active on behalf of the Teamsters, speaking to about a hundred line drivers and urging them to sign Union cards (J.A. 410; 82). On May 2, 1961, Lewis was called into the office of the central dispatcher, Dale Scruggs. Scruggs charged him with improperly "dropping" (i.e. parking) a trailer in the Company's Greenville, Texas lot.* Scruggs then accused Lewis of causing dissension among the drivers by telling them that they were being denied "runs" which they should have received and ordered him to stop causing trouble (J.A. 410; 102). Scruggs next issued a letter of warning to Lewis placing him on probation for a year "to the extent that any further act of negligence or poor judgment on your part will result in your immediate dismissal" (J.A. 410; 83). Lewis continued his activity on behalf of the Union in the fall of 1961 and was designated by the Union to act as an observer for it at the Board election. On the morning of the election, Lewis decided not to be an observer and he so informed Terminal Manager Lane (J.A. 85).

On January 11, 1962, Lewis was assigned a regular run from Shreveport, Louisiana, to Sherman, Texas, via Paris, Texas. While he was unloading freight in Paris, he noticed a shipment of school supplies consigned for Sherman loaded on board a trailer. Lewis asked the Paris dock foreman for permission to load

* Scruggs did not assert, and the Company has not alleged before the Board that the trailer was damaged in any way or that it incurred any expense (J.A. 410; 83-84, 103).

On a previous occasion, Lewis had dropped a trailer which sank into the ground because he had not put a dollie under it. He paid \$15 to have the trailer jacked up (J.A. 84).

the supplies on his trailer and take them to Sherman.¹⁰ The foreman refused to authorize Lewis to pick up the freight, inasmuch as the Company had already dispatched another driver to pick it up and take it to Sherman (J.A. 410-411; 88-89). When Lewis arrived at his destination, he was met by the Sherman agent, Jimmie Alred, who asked him if he had brought the school supplies from Paris. Lewis replied that he had requested authorization to do so but had been refused. Alred then called Dale Scruggs. Scruggs told Alred that he was to inform Lewis that he was under orders to return to Paris to pick up the school supplies and to deliver them to Sherman, all without pay, and that if he refused to carry out the order he would be discharged. Lewis did as he was told and made the 124-mile round trip without receiving any pay therefor (J.A. 411; 89-90).

When Lewis returned to Shreveport, he was summoned to the office of Terminal Manager Lane, who told him that he had been careless in not picking up the school supplies and that he had not used good judgment. Lane conceded that the Paris foreman had been as much at fault as had Lewis but he prepared a statement for Lewis to sign. As he handed Lewis the statement, Lane said, "* * * you don't have to sign this, but if you don't sign this, this is it." Lewis signed the statement, which contained, among other things, an "admission" by him that he had "failed to use judgment in moving freight from Paris to Sherman, Texas" (J.A. 411; 90-91, 353).

¹⁰ Company rules forbade Lewis from picking up the freight without authorization (J.A. 88).

On March 11, 1962, Lewis was dispatched to Homer, Louisiana, to pick up a load of rolls of paper at the Ludlow Plastics plant (J.A. 411; 95-96). The load consisted of about 30 rolls with a total weight of more than 39,000 pounds. Lewis and two Ludlow employees loaded about 15 rolls of paper on the trailer. At that point, the three men determined that the rolls would not fit on the trailer unless they were stood on end. They unloaded the paper and secured the services of a fork-lift truck operator, who loaded the paper on the trailer (J.A. 412; 95-96). Lewis took the shipment to Shreveport, where he filled out his daily log, claiming a tonnage fee for helping to load and unload the paper at Ludlow. As there was no supervisor present, Lewis asked another driver, Bill Hogan, to approve his tonnage claim. Hogan did so by initialing Lewis' log (J.A. 412; 105-106).

Several days after Lewis submitted his log for payment, he received a letter from Dale Scruggs asking if he had in fact helped to load the paper at Ludlow and further asking for the name of the person who had approved Lewis' tonnage claim, inasmuch as he did not know any supervisor with the initials "B. H." (J.A. 412; 97-98, 361).¹¹ On the bottom of the letter from Scruggs, Lewis wrote that he had in fact as-

¹¹ Lewis testified without contradiction that he had requested Hogan to sign the tonnage claim because no supervisors were present, and that he had never been informed that it was against Company rules to have another driver do this under those circumstances (J.A. 412; 105-106). It is conceded that other drivers had acted similarly on previous occasions (J.A. 325). In any event, the Company conceded that the fact that Lewis had Hogan approve his tonnage claim did not play any part in Lewis' discharge (J.A. 327).

sisted in loading the freight. Lewis then brought the letter to the dock foreman, Prince, who wrote on the letter that he approved Lewis' tonnage claim. Prince also initialed the tonnage claim on Lewis' log (J.A. 412; 98-99).¹²

On March 28, 1962, Lewis reported to Scruggs' office at Dallas, to which he had been summoned the previous day. Scruggs stated he had proof, in the form of a letter from Ludlow, that Lewis in fact had not assisted in loading the paper. He did not show Lewis the letter.¹³ Scruggs then offered Lewis a chance to resign and, when he refused, discharged him. On the following day, Scruggs wrote Lewis stating he had been discharged because of his false tonnage claim and his failure to pick up the school supplies in Paris, after having been placed on probation in May 1961 (J.A. 412; 83).

The Board found (J.A. 413-414) that the Company discharged Lewis for his union activities and that it used Lewis' allegedly false tonnage claim as a pretext to hide its real motive. In reaching this conclusion, the Board relied on the Company's warning to Lewis that it would discharge him for any act of "negligence" or "poor judgment," terms so vague that he could not be reasonably expected to understand them; on the Company's obviously unfair

¹² Lewis was never paid for his tonnage claim. Nor was he paid for his waiting time at Ludlow—time for which he would have been entitled if he had not claimed a fee for helping to load the trailer (J.A. 412; 99-100). It is conceded that Lewis' tonnage claim amounted to \$1.88 more than he would have received for waiting time at Ludlow (J.A. 412; 323-324).

¹³ The Company did not produce the letter at the hearing.

criticism of Lewis for his failure to pick up the trailer load of school supplies in Paris after having been ordered not to do so; on Lane's forcing Lewis on that occasion to sign a self-incriminating statement; and on the Company's failure to produce any proof that Lewis had in fact not helped with the loading at the Ludlow plant, although Scruggs had claimed to have proof in his possession.

3. Elton Cathey

Cathey began work for the Company in 1959 as a line driver (J.A. 402; 53). In 1961 he became active in the Union's organizing drive. He spoke to about 175 drivers, every line driver that he knew in Dallas, and secured about 75 signatures on union cards.

In July 1961 Cathey and the other Teamster advocates supported Hester in his unsuccessful campaign against Craig for the presidency of the U.T.E. (J.A. 387; 55-56, *supra*, p. 4). About two weeks after the election Cathey was summoned to the office of Safety Director Barr, who informed him that he had spot-checked a number of tacograph charts and that these charts revealed that Cathey had committed several recent speeding violations.¹⁴ Cathey was is-

¹⁴ Each of the Company's trucks is equipped with a tacograph, which records, *inter alia*, the speed at which the truck is traveling. About 7,000 or 8,000 of these charts are sent to the main terminal at Dallas every month. Barr occasionally spot-checks them by going down to the shop and just "grab[bing] a fistful of charts" (J.A. 389; 265). As a result of his spot-checking the tacograph charts in July 1961, Barr issued warning letters to three drivers, Hester, Hodgkins (*infra*, pp. 23-26) and Cathey (J.A. 402; 239-240).

sued a warning letter for his speeding violations and another letter for mistakes in his ICC logs (J.A. 57-59).

Shortly after the U.T.E. election, the Teamsters renewed their organizing campaign. Cathey continued soliciting Union memberships (J.A. 60-61). On the second day of the Board election, he told the dock foreman at the Amarillo terminal that he was a Teamster supporter (J.A. 61-62). Shortly after the election, dispatcher Ed Walton kidded Cathey about the Teamsters losing the election, saying, "I see you boys didn't get very far" (J.A. 62).

On April 1, 1962, Cathey left Dallas on a run to El Dorado, Arkansas. Before leaving Dallas, he checked all the equipment, including his tires and wheels (J.A. 402; 63-64). He checked his equipment again at Wills Point, Texas, and again at Longview, Texas (J.A. 402; S.A., *infra*, page 51). At Shreveport, he dropped his trailer and picked up another and checked his equipment a fourth time. While Cathey was driving down the highway about 70 or 75 miles from Shreveport, the dual outer drive wheels on the right side of the tractor suddenly came off. One of the wheels rolled off the highway but the other rolled into a car parked at the side of the road, damaging it extensively.¹⁵ Cathey was able to hold the rig on the road and brought it to a safe stop (J.A. 402; 64-65). An inspection revealed that the wheels had come off because the ten studs which come out of the brake

¹⁵ The amount of damage was about \$650 (J.A. 402; 380).

drum hub and which hold the inner dual wheel to the axle had sheared off (J.A. 65-66).¹⁶

Cathey reported the accident to the Shreveport terminal. A replacement for Cathey's tractor was brought out and Cathey hauled the trailer into El Dorado (J.A. 402; 67-68). At El Dorado, Cathey asked the terminal manager, Nethercutt, to find out if he would be fired. Nethercutt replied that he did not believe Cathey would be fired. Cathey said he thought he would be fired because he had "carried slips around and they knew [he] was a Teamster" (J.A. 68-69).

On the following day Cathey was dispatched on a regular run to Houston. From there he was dispatched to Dallas and, on April 5, was summoned to Barr's office (J.A. 402; 70-71). Barr asked about the accident and Cathey explained what had happened. Barr showed Cathey a bulletin issued to drivers and said that it required drivers to check their wheels and lugs every 75 miles. Cathey, after reading the bulletin, denied that it mentioned lugs (J.A. 403; 71-72).¹⁷ Barr asked Cathey how long he had driven

¹⁶ The studs had sheared off just at the point where they emerge from the hub. When in place on the tractor, each stud is covered by a sleeve, the dual wheels and a lug nut. With the dual wheel in place, the studs were not visible; they could be examined only by removing the dual wheels (J.A. 66-67, 78-81, 352).

¹⁷ The bulletin supports Cathey. It is entitled "Tire Fires" and deals solely with their prevention and with methods of fighting them, principally by keeping tires properly inflated, and asks drivers to check their tires every 50 to 75 miles (J.A. 353-354). Checking the tire for proper air pressure is generally accomplished by hitting it with a piece of wood or metal or by kicking it (J.A. 63).

his rig on April 1 without checking it. Cathey replied that he had made his last check at Shreveport (J.A. 403-404; 72). Barr requested Cathey to resign and, when the latter refused, discharged him (J.A. 403; 72).

Cathey telephoned J. C. House, the U.T.E. representative, and asked him to come to Barr's office. When House arrived, Cathey repeated his version of the accident and asked Barr why, if he was such a bad risk, he had been allowed to drive for the Company following the accident. Barr replied that he had planned to wait until Cathey got to Dallas. Cathey said, "In other words, you knew you were going to fire me when you talked to those people?" and " * * * if I hadn't gotten around to Dallas I might have had another day or two's work." Barr replied, "That is right * * * I was going to fire you when you got to Dallas whether it was Thursday morning or Wednesday morning." (J.A. 403-404; 73-74.)

The Board concluded (J.A. 405-406) that the Company discharged Cathey for his activities on behalf of the Union and not for his alleged failure to check his equipment. The Board noted that Cathey had in fact complied with the Company's rules before the accident by checking his tires every 50-75 miles, that he had no reason to believe anything was wrong with the truck, that he so informed Barr, but that Barr had determined to discharge Cathey even before speaking to him about the accident.

4. William Clem

Clem began work as a mechanic in the trailer shop in May 1961 (J.A. 414; 107). He became active in the Teamster organizing campaign, secured membership cards from employees in the maintenance shop, and served as a Teamster observer at the Board election (J.A. 414; 107). Five days after the election, Clem resigned from the U.T.E. (J.A. 414). In January 1962 he was summoned to the office of Harold Odum, maintenance supervisor. Odum criticized him for creating dissension among the men and spreading rumors to the effect that newly hired employees were being given higher job classifications than older employees (J.A. 414; 111-112). In February Odum offered to transfer Clem to a higher-paying position at the Company's Denver shop. Clem declined the offer because his family did not wish to move (J.A. 415; 113-115).

In April, Clem, along with five other maintenance employees, was called into Odum's office. Odum announced that he was under orders to cut the shop payroll and that he had selected the six for layoff by seniority (J.A. 415; 115-116). One of the men raised the question of bumping. Odum said that anyone who had the right to bump, by virtue of his seniority and qualifications, would be allowed to do so. Clem said that the other men had the right to bump but that he did not, because he was not a member of the U.T.E. Odum, although he was aware that Clem was in error and had the right to bump to another job without any loss of pay, remained silent (J.A. 415-416; 308-309).

The Board concluded that Odum's failure to tell

Clem that he could bump to another job, when he knew that Clem was under the mistaken belief that he could not, was motivated by Clem's Teamster activity and constituted a constructive discharge. In reaching its conclusion, the Board relied on the Company's previous attempt to remove Clem from the shop by transferring him to Denver, on the Company's contemporaneous discriminatory discharge of six other leading Teamster adherents, and on the fact that "ordinary fair dealing between employer and employee" would have led Odum to inform Clem of his right to bump (J.A. 416).

5. Joe Shamblin

Shamblin began working for Red Ball in 1957 as a pickup and delivery driver in Dallas (J.A. 406; 119). Shamblin became active in the U.T.E. He was elected a committeeman in 1958 and served as councilman for the Dallas city drivers in 1959. In 1960 he was appointed treasurer of the U.T.E. by the president, Craig, and in 1961 was re-elected to that position. Soon afterward, Shamblin became dissatisfied with the administration of the U.T.E. He sent Craig a letter insisting that certain changes be made and stated that henceforth he would not sign any U.T.E. checks until the changes were put into effect (J.A. 406; 120-121, 354-355).¹⁸ A week later, Shamblin was expelled from the U.T.E. (J.A. 406; 123).

After his expulsion, Shamblin became active in the Teamsters. He spoke to a number of employees,

¹⁸ Shamblin mailed a copy of this letter to the Company (J.A. 406; 121-122).

praising the Teamsters and attacking the U.T.E. (J.A. 406; 123). He was elected a Teamster steward (J.A. 123). In November Shamblin attended a meeting of employees which was addressed by Vice-President Fisk, who attacked the Teamsters, calling them Communists. Shamblin arose and protested that the charge was untrue (J.A. 406; 123-124). At the close of the meeting, Fisk detained Shamblin and asked what was wrong with him. Shamblin replied that he was happy in his job but that he was dissatisfied with the U.T.E. Fisk suggested that he could assist Shamblin in transferring to Denver, which was under a Teamster contract. Shamblin replied, "No, Mr. Fisk, I'll just stay in Dallas, Texas, and work under the Teamster contract here" (J.A. 406; 124-125). In December Shamblin served as a Teamster observer at the Board election (J.A. 406; 125).

On March 28, 1962, the day after Limbaugh's discharge (*supra*, pp. 5-8), Shamblin and several other employees were standing around Shamblin's truck in the parking lot when Fisk and Terminal Manager Lane came out of the office, walked over to them and asked, "What's the trouble out here, Joe?" Shamblin replied, "We were discussing the tires on my pickup." Fisk then said, "Don't kid me Joe. You're out here with that Teamster trouble-making business" and he added, "Joe, what's wrong with the employees?" Shamblin replied that the drivers were unhappy over Limbaugh's discharge. After a brief discussion, Fisk asked Shamblin why he did not resign, if he were so dissatisfied with conditions at Red Ball. Shamblin

refused to quit and added that Red Ball was run like a dictatorship (J.A. 407; 126-127). On April 7, Shamblin was summoned to Lane's office to discuss a minor accident in which he had been involved the preceding day.¹⁹ During the conversation, Lane called Shamblin a troublemaker and accused him of "keeping the men in an uproar all the time." He ordered Shamblin to stop talking to the men and to leave the Company premises just as soon as he finished his work. Lane again asked Shamblin if he wanted to quit, told him that the U.T.E., and not Shamblin, represented the employees and criticized him for making remarks about Henry English, the Chairman of the Board. Shamblin again refused to resign. He said that the U.T.E. did not honestly represent the employees and added that he was "ashamed of Mr. English for being a part of this false Union * * *" (J.A. 407; 127-132).

Later that month, Shamblin was assigned to a "less than truckload" (LTL) run. This assignment was considerably more difficult than his previous job, as it involved handling many different shipments and types of freight from different shippers (J.A. 407; 132-133). On April 25, Shamblin made his last pickup of the day at the Western Electric Company warehouse, just before the 4:30 p.m. closing time. The Western Electric pickup consisted of between 12 and 20 different shipments totaling about 200 cartons. After the freight had been loaded on to his trailer, Shamblin told the Western Electric employee

¹⁹ This accident was not a factor in Shamblin's discharge (J.A. 129).

who had loaded the truck that the shipment was 15 cartons short. The latter answered that Shamblin was probably mistaken and advised him that, as the warehouse was closing for the day, he should return the following morning and straighten the matter out. Shamblin signed for the entire shipment, including the 15 missing cartons, and left the warehouse.²⁰ On the following morning, the missing shipment was found in the Western Electric warehouse. Shamblin immediately notified Red Ball's break-out foreman, Jim Hitt. Hitt told him to bring the shipment in and he did so (J.A. 407-408; 134-137).

About five days later, Shamblin was summoned to the office of Terminal Manager Lane, who criticized him for mishandling the Western Electric shipment.²¹ Disregarding Shamblin's explanation of the incident, Lane asserted that it was apparent that Shamblin must have had something else on his mind and must not have been thinking of his job. Lane added that Shamblin was a troublemaker, again invited him to resign and warned him that a similar mistake would cost him his job (J.A. 408; 139-140).

²⁰ Shamblin had been involved in similar situations on several previous occasions. On each occasion he had been told by a Company supervisor to sign for the entire shipment with the understanding that he would return to check for the missing parcels (J.A. 148).

²¹ The Western Electric shortage came to Lane's attention through a spot check of O S & D (over, short and damaged) reports. At least 80 to 100 O S & D reports are issued each day by the Dallas terminal. Of these, 40 to 50 are shortages, a number of them due to the failure of drivers to pick up shipments (J.A. 409; 198).

On the same day, May 1, Shamblin made a pickup at White's Auto Store warehouse involving 8 to 15 separate shipments comprising 300 to 400 cartons. Thinking that he had received all the merchandise, Shamblin signed the bill of lading. In fact, he had not received six tires and a sign (J.A. 408; 138). Accordingly, on the following day, May 2, he was ordered to return to the White warehouse and pick up the missing goods. When he arrived there, Shamblin found that the merchandise had already been picked up by another driver (J.A. 409; 141-142).²² When he returned to the Red Ball terminal that evening, Shamblin was summoned to the office of Terminal Manager Lane. Lane informed him that he had just learned of the shortage in the White Auto shipment, and discharged him.²³ At the same time, Lane handed him a letter concerning the previous shortage at Western Electric and warning him that the Company would not tolerate mishandling of this nature (J.A. 408; 142-143).

The Board concluded (J.A. 409-410) that the Company had fired Shamblin for his Teamster activities,

²² In the year preceding his discharge Shamblin had picked up merchandise overlooked by other drivers on about six occasions (J.A. 409; 140).

²³ Shamblin was the only pickup and delivery driver discharged by Lane during his tenure as Dallas terminal manager for failure to make proper pickups and deliveries, although he had interviewed and warned other drivers. At the hearing the Company conceded that other drivers had on occasion made more than one mistake of this type without being discharged (J.A. 200). In 1958, Shamblin had failed to pick up the right amount of freight on three separate occasions. In each instance, the only disciplinary action taken against him was the issuance of a warning letter (J.A. 120, 200).

rather than for his failure to pick up merchandise. The Board based its conclusion on Shamblin's position of leadership in and active support of the Teamsters, his outspoken hostility to the U.T.E., the Company's repeated suggestions that he transfer or resign, the relative unimportance of his failures to pick up merchandise, and the disparate treatment accorded him.

6. *Gordon Hodgkins and W. T. Willingham*

a. *Hodgkins*

Hodgkins began to work for Red Ball in May 1956 as a line driver based in Dallas (J.A. 392; 150). He received a safety award every year from 1956 through 1961 (J.A. 398; 163-164). During his six years of employment with Red Ball, he was never at fault in an accident and he never received a traffic citation or summons (J.A. 164). In July 1961 he supported Hester for the presidency of the U.T.E. Four days after the U.T.E. election, he received a letter of warning from Safety Director Barr, along with drivers Cathey and Hester (*supra*, p. 13, n. 14), for speeding and for making improper ICC log entries. Prior to this occasion he had never in his five years with Red Ball, been warned, reprimanded or disciplined by the Company for any traffic infraction or log violation (J.A. 392-393; 152-155). In the fall of 1961 he became active in the Teamsters' organizing campaign, signing an authorization card for an election and attempting to get other drivers to join the Union (J.A. 393-394; 155). He served as a Teamster observer at the Board election (J.A. 394).

In April of 1962 Hodgkins was assigned a regular Houston-Dallas run, generally carrying LTL (less than truckload) freight. Hodgkins usually had the second LTL run each night and a driver named Mabra had the first. Hodgkins' time of departure was determined by the availability of the second load of LTL freight bound for Dallas. Generally, Mabra would leave between 7 p.m. and 9 p.m. and Hodgkins would leave between 9 p.m. and midnight (J.A. 394; 158-159). Early in the evening of May 3, 1962, Hodgkins walked into the dispatcher's office at the Houston terminal and saw the dispatcher, George Samons, talking on the long line telephone which connects all the Company's major terminals. He heard Samons say, "But Mabra is due out first," and then, "Well, I will get them both out by 8 o'clock some way." That night, both Mabra and Hodgkins were dispatched at 8 p.m., Hodgkins carrying the first load of LTL and Mabra, contrary to usual practice, carrying a straight run, although there were other drivers available who normally carried that type of load. Hodgkins had never before left the terminal prior to 9 p.m. (J.A. 394: 159-160).

At about 11:30 that evening, Barr, with Dallas Terminal Manager Lane,²⁴ set up a radar trap just inside the city limits on the south side of Corsicana, Texas, which lies between Houston and Dallas. Shortly after midnight, Hodgkins' truck drove past Barr at a speed of 35 miles per hour in a 30-mile zone. Barr drove on to the highway and followed the truck until it

²⁴ Lane had never previously accompanied Barr when the latter was checking on drivers (J.A. 394; 915).

parked. He stopped, approached Hodgkins, and asked him if he were familiar with the Company rule requiring the drivers to check their tire pressure every 50 to 75 miles and said that he would like to speak to Hodgkins when the latter arrived in Dallas (J.A. 394: 160-162, 282-283). Barr said nothing to Hodgkins about driving over the speed limit (J.A. 394: 282-283). Barr returned to Dallas without waiting to check any more Red Ball trucks, although he knew that several more runs were due to pass through Corsicana that night (J.A. 394: 285). On his way back to Dallas that evening, Barr, without checking Hodgkins' personnel file, decided to discharge him, although it was his policy not to discharge a man he had observed speeding unless the man had previously been warned (J.A. 390, 398; 285, 166).²⁵

When Hodgkins arrived at Dallas that evening he was told to report to Lane's office. Barr told him that he had checked him doing 35 miles per hour in a 30-mile zone in Corsicana and that Hodgkins had continued to speed when Barr followed him. Hodgkins replied that he might have been speeding when he passed Barr's car, but that he had recognized Barr's car and certainly would not speed knowing Barr was behind him. Barr told him he was discharged (J.A. 395; 162-163).

The Board concluded (J.A. 397-399) that the Company's real motive in discharging Hodgkins was his support for the Teamsters. The Board noted the

²⁵ A driver caught speeding by Barr after a warning might or might not be discharged. Barr normally judges each case on its own merits (J.A. 390-391; 284-285).

questionable circumstances surrounding the warning Hodgkins received in July of 1961; that the circumstances surrounding the events of May 3, 1962, indicated that Barr and Lane had deliberately laid in wait for Hodgkins at Corsicana; and that Barr, despite his policy of discharging a man for speeding, if at all, only after he had received a warning, determined to discharge Hodgkins without checking his personnel file, which would have revealed that Hodgkins had an outstanding driving record with only one warning, and that issued 10 months previously.

b. *Willingham*

Willingham began working for the Company in 1954 as a city pickup and delivery driver in Houston (J.A. 395; 7). In 1961 he distributed membership cards for the Teamsters and signed up a number of the men. He served as a Teamster observer at the Board election (J.A. 395; 8-9).

In May 1962 Safety Director Barr decided to check on city pickup and delivery drivers in Houston.²⁸ On the afternoon of May 9, Barr ascertained from the dispatcher that he might find some large Red Ball equipment in the dock area. He drove there and at about 1:30 p.m. he noticed a Red Ball unit parked at City Dock 18 (J.A. 396; 275). Although he normally cruised around when he checked Red Ball drivers, he decided, on this occasion, to park and wait for the truck to load. About an hour and a half later, the

²⁸ Between May 7 and May 10, Barr checked on seven or eight drivers in Houston. This was the only time between March and August 1962 that he checked on any city drivers (J.A. 396; 273-274).

truck, which proved to be Willingham's, drove away. Barr followed the truck to its next stop, waited while it was loaded and then followed it back to the terminal, returning about 5 o'clock (J.A. 396; 275-276, 293).²⁷ At the terminal, Barr summoned Willingham to manager Foster's office and reported that Barr had been driving at 45 miles an hour in a 40-mile zone, had run a stop light, and had changed lanes without signaling (J.A. 396; 275-276). Foster discharged Willingham. Barr left Houston on the following day without making any further checks on the city drivers (J.A. 276).

The Board concluded (J.A. 398-399) that the Company had discharged Willingham for his Teamster activities rather than his driving infractions. The Board noted that the circumstances surrounding the events of May 9, 1962, indicated that Barr had deliberately singled out Willingham for intensive observation in the hope of catching him in a traffic violation, and further noted that from July 1961 until May 1962 the only drivers discharged by Barr for speeding were Hester, Hodgkins and Willingham, all Teamster proponents (J.A. 399; 271).

C. Alleged harassing of Hall Nichols

Nichols began working for the Company in 1952 and became a line driver in 1956 (J.A. 417; 19). He was active in the Teamster organizing campaign in 1960 and 1961 and served as an observer at the 1961 Board election (J.A. 417; 19).

²⁷ Normally, Barr spent no more than 30 minutes to an hour following any one truck (J.A. 275).

In March 1962 Barr followed Nichols for almost an hour and a half when the latter was on a run between Houston and Paris. Barr did not observe any violations of the law and he issued no warning letter (J.A. 417; 22-24, 239).

On May 7 Barr addressed a safety meeting at Houston attended by Nichols and other line drivers. He emphasized that the Company would not tolerate speeding inside city limits²⁸ and, in response to a question, said that he had recently fired Hodgkins for driving inside city limits at 5 miles an hour over the speed limit (J.A. 235-236). On the following day, late at night, Barr followed a Red Ball truck driving at 5 miles an hour over the speed limit within the city limits of Houston (J.A. 417; 236-237).²⁹ Barr followed the truck to the terminal and noted that the driver was Nichols (J.A. 237). On the following day, Barr issued Nichols two warning letters, one for speeding on May 8 and one for failing to observe Barr's instruction of May 7 to be especially careful not to speed within city limits (J.A. 417; 237-238).

The Board concluded (J.A. 417) that, on the above facts, the General Counsel had not established that the Company discriminated against Nichols because

²⁸ The Company permits a 5 mile per hour tolerance on the open road but not within city limits. The drivers knew of this (J.A. 389; 60, 92, 155, 228, 285-286).

²⁹ The posted speed on the expressway where Barr followed the truck is 50 miles an hour. The truck Barr followed was, in fact, proceeding at 50 miles per hour. Under Texas law, however, it is illegal for a truck to drive over 45 miles an hour, regardless of the posted speed (J.A. 218, 237). *Vernon's Penal Code of the State of Texas, Ann., Art. 827(a), Sec. 8, Subsec. 1 (a), (b), Subsec. 4.*

of his union activities, either by following him twice within a 3-month period or by issuing him two warnings letters for speeding on May 8.

II. The Board's order

The Board's order (J.A. 419-421) requires the Company to cease and desist from discouraging membership in and activities on behalf of the Union or any other labor organization of its employees by discharging any employee or by any other act of discrimination, and from in any other manner interfering with, restraining or coercing its employees in the exercise of their rights guaranteed by the Act. Affirmatively, the Board's order requires the Company to offer reinstatement with backpay and interest thereon to employees Limbaugh, Lewis, Cathey, Clem, Shamblin, Hodgkins and Willingham, and to post the usual notices. The Board dismissed the complaint insofar as it alleged discrimination against driver Hall Nichols.

SUMMARY OF ARGUMENT

I. Substantial evidence on the record considered as a whole supports the Board's finding that the Company discharged seven employees because of their activities in behalf of the Teamsters. These employees had campaigned vigorously for the Teamsters before the Board representation election won by the U.T.E. and represented a continuing threat to the Company's wish to avoid dealing with the Teamsters. As the Company's explanations for their discharges do not withstand analysis, the Board reasonably con-

cluded that the seven men were discharged after the election because they favored representation by the Teamsters rather than by the U.T.E.

Horace Limbaugh was suspended pending investigation by Terminal Manager Lane for a minor accident for which he was not at fault. Limbaugh told Lane that he could not afford a lengthy suspension, asked how long the suspension would be in effect, and requested permission to work elsewhere during the suspension. Although Lane knew that Limbaugh's suspension would probably not last beyond 24 hours and that Limbaugh would be paid meanwhile, he failed to advise Limbaugh of these facts and told him he could not work elsewhere while under suspension. The next day, Lane decided to restore Limbaugh to duty. Instead of telling Limbaugh this, he suggested that Limbaugh resign and, when the latter hesitated, encouraged him to do so. The Board reasonably concluded that Lane deliberately provoked Limbaugh's resignation because of the latter's Teamster activities.

Henry Lewis was placed on strict probation for a minor infraction of Company rules shortly after he began organizing for the Teamsters. A month following the Board election, he was disciplined for refusing to pick up a load of freight, although he had been ordered by a company supervisor not to pick it up. Three months later, he was discharged when he allegedly submitted a false claim of \$1.88 for loading work. The claim was not false and the Company had no reason to think it was. The Board was thus amply

justified in concluding that Lewis was dismissed because of his support for the Teamsters.

Shortly after *Elton Cathey* commenced his organizing activities, he was singled out for warning along with two other Teamsters for alleged speeding violations. Following the election, he was involved in an accident which was caused by a mechanical failure on his truck. Before checking with Cathey in any way, and without having any reason to think Cathey had been at fault in the accident, Safety Director Barr decided to discharge Cathey allegedly for not checking his equipment. The Board found that Cathey had properly checked his equipment and so informed Barr, who nevertheless discharged him. These circumstances amply warrant the Board's finding that Cathey was discharged because of his Teamster activities.

William Clem was laid off in April 1962. Clem expressed interest in "bumping" to another job but stated that he could not do so because he was not a member of the U.T.E. Clem's supervisor, Odum, knew that he was mistaken and that he could bump to another job without loss in pay but he failed to inform Clem of these facts. Appraising Odum's conduct in the light of the Company's hostility to the Teamsters the Board properly concluded that the Company constructively discharged Clem.

Joe Shamblin had been openly and zealously active on behalf of the Teamsters. He had repeatedly clashed with Company officials over his support for the Teamsters and his hostility to the U.T.E. and had

repeatedly been invited by them to resign. He was discharged for two minor mistakes on a new and difficult assignment. In view of the inconsequential nature of the mistakes made by Shamblin, and in view of the fact that similar mistakes had often been made in the past by other drivers who were not discharged, the Board properly concluded that the Company discharged Shamblin because of his activity in behalf of the Teamsters.

Gordon Hodgkins and *W. T. Willingham* were singled out for special surveillance by Safety Director Barr and were summarily discharged for going a few miles over posted speed limits. As Barr ignored their previous good safety records, and as the only drivers discharged by Barr for speeding between July 1961 and May 1962 were Teamster supporters, the Board reasonably inferred that they were discharged for their Teamster activity.

II. The Board properly found that the Company did not subject driver Hall Nichols to special surveillance and that its issuance of two warning letters to Nichols for a single speeding violation was not motivated by his Teamster activities. It does not appear that Barr's following Nichols twice in a 3-month period was so unusual as to warrant an inference that Nichols was singled out for special surveillance because of his Teamster activity. Nichols was justifiably given two warning letters for speeding within city limits as his conduct breached a Company standing rule and also Barr's remarks on this very matter made at a special meeting the day before.

ARGUMENT

- I. Substantial evidence on the record as a whole supports the Board's finding that the Company discharged Cathey, Clem, Hodgkins, Lewis, Limbaugh, Shamblin, and Willingham because of their Union activities, in violation of Section 8(a) (3) and (1) of the Act

As shown in the Statement the Company bitterly opposed the Teamsters and favored representation of its employees by the U.T.E. The seven discharged employees had actively and openly supported the Teamsters before the Board election on November 30, 1961, and six of them had either served as Teamster observers at the election or had been designated to do so. They thus represented a continuing threat after the election won by the U.T.E., to the Company's wish to avoid dealing with the Teamsters. As we show below, the Company's explanations for their discharges do not "stand under scrutiny." *N.L.R.B. v. Dant*, 207 F. 2d 165, 167 (C.A. 9), and cases cited. The Board therefore reasonably concluded that the seven men were discharged because they favored representation by the Teamsters rather than by the U.T.E. Cf. *United Brewery Workers v. N.L.R.B.*, 111 App. D.C. 383, 387-388, 298 F. 2d 297, 301-302, cert. denied, 369 U.S. 843.

1. Horace Limbaugh

The record shows that Limbaugh was active on behalf of the Teamsters in 1963, signing up more than 50 drivers and serving as an observer at the Board election, that his union activities were well known to his superiors, that he had been singled out by them for intensive interrogation concerning his union

sympathies and that he had repeatedly affirmed to them his support for the Union (*supra*, pp. 5-6).

Several months after the election, Limbaugh was involved in a minor accident. His credited and uncontradicted testimony is that he was not at fault in any way and that the total damage done amounted to about \$8 (IR 11: *supra*, pp. 6-7). When he reported the accident, he was told by Terminal Manager Lane, that he was being suspended pending investigation. Limbaugh protested that he could not afford a lengthy suspension because of pressing financial obligations and asked permission to work elsewhere during his suspension. Instead of allaying Limbaugh's fears of financial hardship by telling him that his suspension would probably not extend beyond 24 hours and that he would be paid in full until restored to duty, of which facts Lane was fully aware, Lane merely remarked that the length of Limbaugh's suspension was "up to the general office" and that it was "impossible under the Company's policy" for him to work elsewhere while under suspension (*supra*, p. 7). By the following day, Lane had decided to return Limbaugh to duty immediately. Nevertheless, when he heard Limbaugh express fear that the Company was "out to get him" for his union activities, he suggested that he resign, typed out a letter of resignation, and urged Limbaugh to sign it when the latter hesitated to do so (*supra*, p. 8).

Despite the Company's contrary contention before the Board, the Trial Examiner properly credited Limbaugh's testimony that Lane suggested that he

resign as such a suggestion was entirely consistent with Lane's previous conduct. Assuming, *arguendo*, that Limbaugh told Lane that he would resign, it is clear that Lane knew that Limbaugh was resigning because he feared a long suspension without pay because of his Teamster activity. Thus, Limbaugh told Lane that the general office wanted to get rid of him, that he had to support his family, and that he hated to lose the seniority gained in the Company's employ. Lane's failure in these circumstances to advise Limbaugh that he had decided not to suspend Limbaugh but to issue only a warning letter fully warrants the Board's finding that "Lane's entire course of action was calculated to bring about Limbaugh's quitting and that by so bringing it about" the Company constructively discharged him for his union activities (J.A. 402). Cf. *Bausch & Lomb Optical Co. v. N.L.R.B.*, 217 F. 2d 575, 577 (CA. 2); *N.L.R.B. v. East Texas Motor Freight Lines*, 140 F. 2d 404, 405 (CA. 5).

2. Henry Lewis

The record shows that shortly after Lewis' efforts on behalf of the Union commenced, the Company sought a pretext for discharging him. Lewis improperly parked a trailer in May 1961. Although the trailer was not damaged and the Company incurred no expense thereby, Lewis was placed on probation with a warning that "any further act of negligence or indication of poor judgment on your part will result in your immediate dismissal" (*supra*, p. 9).³⁰

³⁰ There is no direct evidence that the Company knew of Lewis' union activities at this time. These activities, however,

The Company thereafter, in January 1962, severely criticized Lewis for "failing to use good judgment" in not delivering a trailer-load of school supplies he saw at Paris, notwithstanding the fact that he had asked the dock foreman at Paris if he should do so and had been instructed that he should not, because another driver was scheduled to pick them up and deliver them. As the Trial Examiner expressed it, "I am at a loss to understand how this can be said to constitute negligence or poor judgment or what Lewis could conceivably have done short of defying supervisory authority and disrupting [the Company's] transportation schedules" (J.A. 413). Despite this fact and despite Lane's admission to Lewis that the dock foreman was partly at fault, an admission which the Board properly found to be "something of an understatement" (J.A. 413),²¹ Lane forced Lewis, under threat of discharge, to sign a self-incriminating statement. Two months later, Lewis claimed a \$1.88 tonnage fee for helping to load and unload a shipment of paper. Lewis' uncontradicted testimony established that he did load the paper. He so informed the Company and subsequently had his claim approved by the dock foreman, Prince (*supra*, p. 12). The

were extensive (*supra*, p. 8-9). Moreover, the unfair terms of the probation, in the absence of any other explanation and in light of subsequent developments, support the Board's finding that these probationary conditions were discriminatorily motivated. In any event, there is no doubt that the Company was well aware of Lewis' union adherence long before it warned him the following January and discharged him in March (*supra*, p. 9).

²¹ The record does not indicate that the foreman was punished in any way (J.A. 413).

Company, nevertheless, investigated the claim and asserted to Lewis that it had evidence, in the form of a letter from the shipper, proving that the claim was dishonest, and discharged him. It did not, however, show this letter to Lewis and it did not produce the letter at the Board hearing.³²

As it thus appears that, coincidental with his Teamster activity, Lewis was placed on severe probation for a minor infraction of a Company rule, that he was subsequently reprimanded without cause, and that the Company had no good reason to believe that he had submitted a dishonest claim for a \$1.88 tonnage fee, the Board reasonably found that the real reason for his discharge was the Company's desire to get rid of a Teamster supporter.

3. Elton Cathey

Cathey was active in the Teamsters' organizing drive in 1961 and signed up about 75 employees. His activities on behalf of the Union were well known to the Company (S.A., *infra*, p. 50; *supra*, pp. 13-14).

³² It is, of course, settled law that the Company's failure to introduce this letter permits an inference to be drawn that the letter, if introduced, would not have supported the Company's position. *Interstate Circuit v. United States*, 306 U.S. 208, 225-226; *N.L.R.B. v. Wallick*, 198 F. 2d 477, 482 (C.A. 3); *Jones on Evidence*, 5th Ed. Vol. 1 § 28; *Wigmore on Evidence*, 3rd Ed., Vol. 2, § 285.

Respondent's Exhibit 21 (J.A. 362-363), introduced in support of its claim, does not mention Lewis and is in no way inconsistent with his uncontradicted testimony that he did in fact assist in loading and unloading the paper before it was finally loaded by a fork-lift truck (J.A. 363). In any event, the letter was not written until October 1962, and thus could not have been relied upon by the Company when it discharged Lewis.

At night, on April 1, 1962, about 70-75 miles past Shreveport, Arkansas, two outer wheels on a tractor being driven by Cathey suddenly came off, one of which rolled off the highway into a parked car, damaging it to the amount of \$600. A day or two later, Shop Foreman Sanders informed Safety Director Barr that the wheels on Cathey's tractor "looked like they possibly could have been run [in a loose condition] a good long distance" (J.A. 247-248). Sanders, however, obviously did not consider Cathey blameworthy for the accident because he merely submitted a routine shop work order to the Dallas office at the end of the month (S.A., *infra*, pp. 51-52). Moreover, the Company's service department was responsible for checking and correcting mechanical faults. Although Cathey was expected to check his tires for proper inflation every 75 miles, it was unlikely that he would notice that the wheel nuts were loose while checking tires at night. Nor would he be likely to risk personal injury as well as damage to equipment by driving a truck at highway speed knowing that the wheels were loose.

Barr, nevertheless, discharged Cathey on April 5, allegedly because Cathey admitted to him that he had failed to check his wheels and tires before leaving Shreveport.³³ The Trial Examiner, however, was

³³ Before the Board, the Company argued that Cathey, shortly after the accident, admitted to driver Murphy that he had not checked his equipment and that he expected to be fired therefor. Murphy's testimony on cross-examination establishes that Cathey merely stated that he expected to be fired and that he expected that the Company would allege, as the reason for firing him, that he had not checked his equipment (J.A. 212-213).

amply justified in crediting Cathey's testimony that he told Barr that he had checked his tires for proper inflation at Shreveport and that the Company did not expect him to check wheels or lugs, for Cathey's testimony in this respect is consistent with the Company's bulletin on "Tire Fires," requesting line drivers to check tires for proper inflation "prior to departure and every 50 to 75 miles while enroute between terminals" (J.A. 353-354). The bulletin does not in any way deal with inspection of wheels for mechanical faults. Rather, as previously indicated, this is the responsibility of the Company's service department.

It thus appears that Barr, both before and after his talk with Cathey on April 5, had no reason to believe that Cathey had failed to check his equipment before the accident. It also appears from Cathey's credited testimony that Barr had decided to discharge Cathey before speaking to him about the accident (J.A. 403-404). The Board therefore reasonably found that Barr's decision to discharge Cathey was motivated, not by a belief that Cathey had failed to check his equipment, but by a desire to get rid of Cathey because of his extensive activity in behalf of the Teamsters.

4. William Clem

Clem was an active Teamster supporter who served as an observer at the Board election on November 30, 1961. On February 5, Maintenance Supervisor Odum offered Clem a higher-paying job in the Denver terminal which was under a Teamster contract (*supra*, p. 17). Two months later, Odum told Clem and five other trailer shop employees that they were being laid

off. One laid-off employee brought up the question of bumping rights and Clem said the others had a right to bump but that he did not have that right because he was not a member of U.T.E. Although Odum knew that Clem had bumping rights and could have bumped to another job without any loss in pay, he kept quiet. As observed by the Trial Examiner (J.A. 416), "ordinary fair dealing between employer and employee would have dictated" that Odum notify Clem of his right to bump to another job. Odum knew that Clem was a Teamster adherent and that his failure to bump would accomplish the same result as the transfer to Denver previously offered Clem—removal from the union activities at the Dallas shop. Accordingly, in the absence of any other explanation for Odum's conduct, and appraising his conduct in the light of the Company's hostility to the Teamsters, the Board reasonably inferred that Odum deliberately failed to advise Clem of his job retention rights, knowing that Clem was ignorant of these rights, because of Clem's Teamster activity. It therefore properly concluded that the Company constructively discharged Clem, in violation of Section 8(a) (3) and (1) of the Act.

5. Joe Shamblin

Shamblin was expelled from the U.T.E. on October 15, 1961, and thereafter campaigned actively for the Teamsters, became a steward, and served as an observer at the November 30 election. On March 28, 1962, Vice President Fisk accused Shamblin of "Teamster trouble-making business" and suggested that he quit (*supra*, p. 19). On April 6, Terminal

Manager Lane also suggested that Shamblin quit when Shamblin charged that the Company's principal owner, Henry English, was "part of a false union" (*supra*, p. 20).

On April 25, 1962, shortly after being assigned to an LTL ("less than truck") run, Shamblin noticed that a shipment being loaded on his truck at the Western Electric Company warehouse was 15 cartons short. He pointed this out to the Western Electric employees. They denied that the shipment was short and suggested that, as the warehouse was about to close for the day, Shamblin return the following morning to straighten the matter out. Early the next day, the missing shipment was found in the Western Electric warehouse. Shamblin immediately picked it up and brought it to the Red Ball terminal (*supra*, p. 21).

Five days later, Terminal Manager Lane criticized Shamblin for mishandling the Western Electric shipment. Disregarding Shamblin's attempt to explain the incident, Lane accused Shamblin of not devoting his entire attention to his job and of being a trouble-maker, invited him again to resign, and warned him that a similar mistake would cost him his job (*supra*, p. 21). That same day, Shamblin mistakenly failed to pick up six pieces of equipment at White's Auto, in a shipment comprising 300 to 400 such pieces (*supra*, p. 22). On the following day, Lane discharged him. At the same time, Lane handed him a letter which referred to the Western Electric incident and warned him that the Company would not tolerate similar mistakes (*ibid.*).

It is clear from the record that Shamblin's failure to pickup the entire shipment at Western Electric on April 25 was the fault of the Western Electric employees, not his own, and that Shamblin himself picked up the goods early the following morning. While Shamblin may have been technically in error in signing for the entire shipment without indicating that it was 15 cartons short, his testimony is un-denied that that previously, in similar situations, he had been instructed by Company supervisors to do just that. Shamblin was, to be sure, at fault in failing to pick up the entire White's Auto shipment but he had been on his "LTL" assignment for only a short time and was not used to handling large numbers of individual items in numerous shipments. Although a special run was necessary to pick up the merchandise at White's the following day, such special runs were a common occurrence. In neither case did the Company suffer any financial loss and in neither case did it demonstrate that it was greatly inconvenienced. Under these circumstances, the Board reasonably found that the Company's complaint over the Western Electric incident "approache[d] the trivial" and that the White incident was "of little higher stature" (J.A. 409). It is admitted that the Company's Dallas terminal receives 80 to 100 O S & D (over, short or damaged) reports daily. Of these 40 to 50 are shortages and a number of these shortages are due to the failure of drivers to pick up shipments. Yet Lane testified that Shamblin

was the only driver he ever fired at Dallas for failure to pick up merchandise (*supra*, p. 22, n. 23).

The foregoing circumstances, we submit, amply warrant the Board's conclusion that the Company would not have discharged Shamblin for two minor mistakes on a new and difficult assignment but for his activity in behalf of the Teamsters.

6. Gordon Hodgkins and W. T. Willingham

Both Hodgkins and Willingham were active Teamster adherents and served as observers at the November 30, 1961, election. Hodgkins had an outstanding safety record and had received five safety awards between May 1956 and July 1961. After a purported random sampling of 7000 tacographs, Barr, on July 17, 1961, warned Hodgkins against speeding. Hodgkins at this time was actively assisting Teamster efforts to win control of the U.T.E. (*supra*, p. 23). Willingham received a written warning in March 1962 for exceeding 10 miles an hour in the Company's yard. Barr discharged Hodgkins on May 3, 1962, and Willingham on May 9, 1962, allegedly for going 5 miles over the posted speed limits. The record shows that Hodgkins and Willingham, both Teamster adherents and election observers, were the only drivers of the hundreds in the Company's employ discharged for traffic violations from July 1961 to May 1962 (J.A. 271). The record also indicates that Barr, contrary to his usual practice, discharged both men without checking into their work records. Had he done so, he would have learned that Hodgkins had an exceptional safety record and that Willing-

ham's prior warning for speeding involved a company rule and not a traffic violation.

It is evident, however, that Barr deliberately set out to catch Hodgkins and Willingham in traffic violations which he could use as a pretext to discharge them. On the night of May 3, 1962, Hodgkins was dispatched out of turn. Barr, along with Lane, who had never before accompanied him; set up a radar trap in Corsicana on Hodgkins' route to Dallas. After assertedly catching Hodgkins speeding, they reminded him of the need for regularly checking his tires but said nothing to him about observing the speed limit. As Hodgkins still had some distance left to drive in Corsicana, it would seem that their primary interest was in detecting Hodgkins in a violation rather than in traffic safety. They returned to Dallas without checking any other drivers, although they were aware that several other Red Ball units were due to pass through Corsicana that night. At Dallas, Barr discharged Hodgkins for travelling 5 miles over the posted 30-mile speed limit in Corsicana.

As to Willingham, Barr waited 1½ hours at the Houston dock until Willingham had loaded his truck and then followed for almost 2 hours throughout the streets of Houston. During this time he allegedly observed Willingham going 45 miles per hour in a 40-mile zone, and then go through a stop light. Barr followed Willingham back to the Houston terminal and had him discharged.

It thus appears that Hodgkins and Willingham were summarily discharged for going a few miles over posted speed limits on one observed occasion, that their previous good safety records were ignored and that the only drivers discharged by Barr for speeding between July, 1961 and May, 1962 were Teamsters. The Board therefore was amply justified in concluding that Hodgkins and Willingham were not discharged for speeding violations, but because of their activities in behalf of the Teamsters.

II. Substantial evidence on the record as a whole supports the Board's finding that the Company did not violate Section 8(a) (3) and (1) of the Act by subjecting Hall Nichols to special surveillance and issuing him two warning notices for one offense

The evidence shown in the Statement (*supra*, p. 28) shows that Barr followed Nichols on two occasions within a 3-month period. Nothing in the record indicates that Barr's conduct in thus putting Nichols under observation twice within 3 months was so unusual as to give rise to an inference that Barr had singled him out for special surveillance because of his Teamster activity.

The record also shows that on May 7, 1962, Barr cautioned Nichols and other drivers that the Company would not tolerate speeding within city limits and that, when Barr caught Nichols speeding inside a city the next day, he gave Nichols two warning letters instead of the customary one. One of these letters was given for Nichols' violation of the Company's standing rule against speeding within city limits; the other, for his violating Barr's instructions on this very point

which had been given only the day before. Despite the Company's contemporaneous discharge of the other Teamster observers, the Board was justified in finding that Barr's issuing two warning letters under these circumstances was not so unreasonable as to permit a finding of discriminatory conduct.

CONCLUSION

For the above reasons, the Board's order should be enforced in full.

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Assistant General Counsel,

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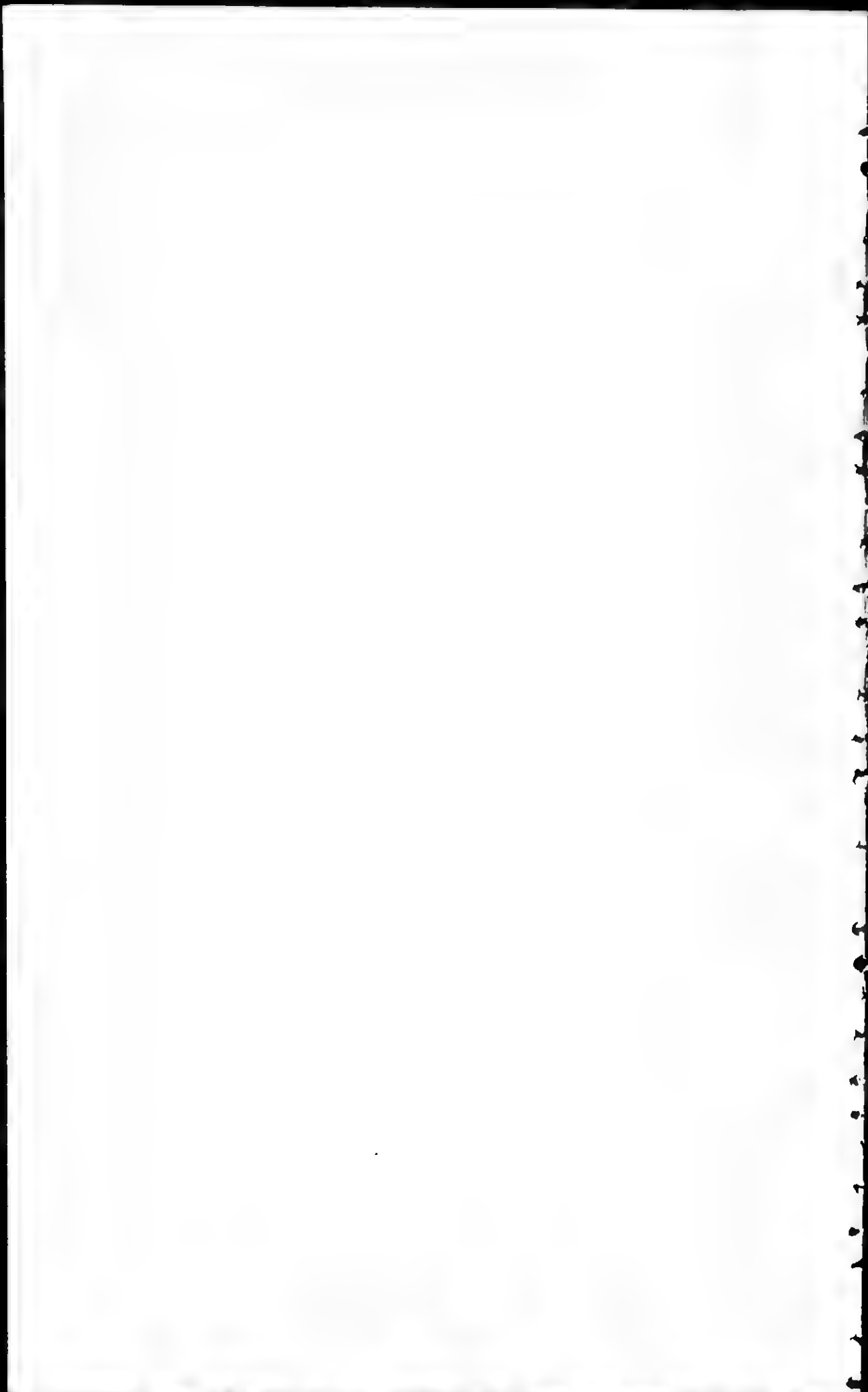
HAROLD B. SHORE,

Attorneys,

National Labor Relations Board.

DECEMBER 1963.

SUPPLEMENTAL APPENDIX



UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD

Case No. 23-CA-1435

RED BALL MOTOR FREIGHT, INC. AND GENERAL DRIVERS,
WAREHOUSEMEN AND HELPERS LOCAL UNION No.
968; DALLAS GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION No. 745; TRUCK DRIVERS AND
HELPERS LOCAL UNION No. 568, ALL AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF
AMERICA

ORDER DENYING MOTION

On March 5, 1963, Trial Examiner Horace A. Ruckel issued his Intermediate Report and Recommended Order in the above-entitled proceeding, finding that the Respondent has engaged in certain unfair labor practices in violation of Section 8(a) (3) and (1) of the Act, and recommending that it take certain specific action to remedy such unfair labor practices. The Respondent, the Charging Parties, and the General Counsel filed exceptions thereto. On June 26, 1963, the Board issued a Decision and Order¹ in which it adopted the findings, conclusions, and recommendations of the Trial Examiner, and as its Order the "Recommended Order" of the Trial Examiner.

Thereafter, on July 29, 1963, the Respondent filed a Motion for Reconsideration of the Decision and Order, contending that the Board, by adopting, without change or modification, the findings, conclusions, and

¹ 143 NLRB No. 32.

recommendations of the Trial Examiner, has compounded many factual errors made by the Trial Examiner, and alleging that many of the Trial Examiner's findings of fact are totally without foundation or support in the record. It requested that the Board reconsider and vacate its Decision and Order, and that, upon reconsideration, find that Respondent has not engaged in unfair labor practices in violation of Section 8(a) (1) and (3) of the Act and dismiss the complaint in its entirety.

The Board, having duly considered the matter, finds that the Employer's motion is not based upon any evidence that had not been previously before the Board, and its allegation that the Trial Examiner's findings are without supporting evidence is without merit.

The Trial Examiner's erroneous finding (to which the Respondent took no exception) that Elton Cathey served as an observer for the Teamsters in the Board election, whereas, in fact, he did not, likewise does not warrant the reconsideration of the determination as to Cathey. Cathey's activities in behalf of the Teamsters during the Union of Transportation Employees intraunion campaign and election, and during the subsequent representation campaign were so extensive and well known to the management as to support a finding of discrimination as to him on that evidence alone. Therefore,

It is hereby ordered that the Respondent's Motion for Reconsideration be, and it hereby is, denied.

Dated, Washington, D.C., August 13, 1963.

By direction of the Board:

GEORGE A. LEET,
Associate Executive Secretary.

EXCERPTS FROM TRANSCRIPT OF TESTIMONY

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Q. What time did you leave Dallas, approximately, on April 1st?

A. I would say around 2:00 o'clock, somewhere close to noon.

Q. And you proceeded to Shreveport?

A. Right.

Q. I believe you testified that your first stop was Shreveport?

A. Wills Point.

Q. Wills Point? Is that in Texas?

A. Yes, sir.

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Q. After you left Wills Point on U.S. Highway 80, where was your next stop?

A. Oh, I stopped in Longview for a few minutes.

Q. And what did you do in Longview?

A. I got out and kicked my tires.

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Q. After the tractor was brought back to the Shreveport shop, did you talk to Mr. Cathey about the accident?

* * * * *

Q. Did you make a report on this accident?

A. Nothing, no more than just shop repair order showing replacing the wheel studs.

Q. When did you make the report, do you know?

A. It was possibly, went in, repair order was made possibly that day or the next day. And it was just put in the file with the regular shop work orders and eventually later that month, was sent in to Dallas with the routine work orders.

Q. I see. When do you normally send your routine work orders in to Dallas?

A. Well, towards the last of the month.

Q. Towards the last of the month.

Of this, do you usually make reports of accidents that occur in your territory?

A. Yes, anytime I repair any damage. * * *

Q. When you have damage done, do you make an oral report to Dallas or to the General Office?

Mr. MATTHEWS. What kind of a report are you talking about, Counsel, an accident report or some report—

Mr. AVEDON. Report of damage to equipment.

The WITNESS. No sir, that is just handled on this work order. I believe I stated on this work order, "called to road south of El Dorado, Arkansas, caused by wheels breaking off tractor."

By Mr. AVEDON:

Q. Did you make an oral report of this to Dallas? Involving this accident of Cathey's?

A. I don't believe I did.

BRIEF FOR PETITIONER

In the
**United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

No. 17,956

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS,
LOCAL UNION NO. 968; DALLAS GENERAL DRIVERS,
WAREHOUSEMEN AND HELPERS, LOCAL UNION NO.
745; TRUCK DRIVERS AND HELPERS LOCAL UNION
No. 568,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

RED BALL MOTOR FREIGHT, INC.,
Intervenor.

**ON PETITION TO REVIEW AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

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United States Court of Appeals
for the District of Columbia Circuit

FILED NOV 19 1963



Nathan J. Paulson
CLERK

Statement of Question Presented

1.

Whether the Board erred in not finding additionally that the Company violated Section 8(a) (3) and (1) of the Act by singling driver Nichols out for special checks and/or issuing Nichols warning notices for alleged violations of company rules, and in failing to issue a proper order to remedy said violation.

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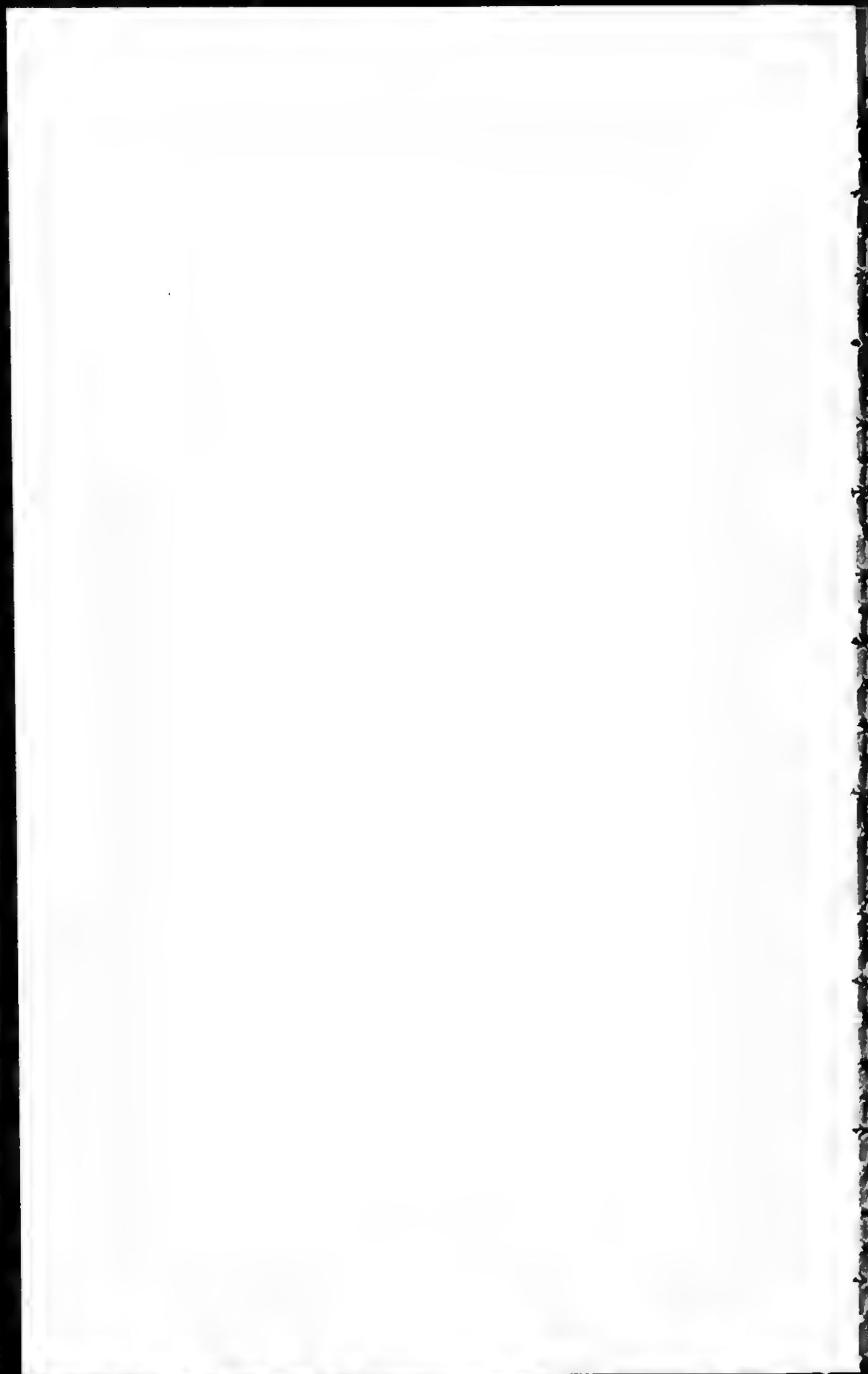
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In the
United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,956

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS,
LOCAL UNION No. 968; DALLAS GENERAL DRIVERS,
WAREHOUSEMEN AND HELPERS, LOCAL UNION No.
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No. 568,

Petitioner,

v.

NATIONAL LABOR RELATIONS BOARD,
Respondent,

and

RED BALL MOTOR FREIGHT, INC.,
Intervenor.

**ON PETITION TO REVIEW AN ORDER OF
THE NATIONAL LABOR RELATIONS BOARD**

BRIEF FOR PETITIONER

Jurisdictional Statement

Petitioner, three Local Unions affiliated with the International Brotherhood of Teamsters, was the charging party before the National Labor Relations Board and now seeks review of the part of the Board's Decision and Order which was unfavorable

to the charging party. Red Ball Motor Freight, Inc., the respondent before the Board, has been permitted to intervene in this proceeding. In 17,994 the Board has filed a petition for enforcement of its Order against Red Ball Motor Freight, Inc. This Court has jurisdiction under Sections 10(e) and 10(f) of the National Labor Relations Act, 29 U.S.C. §§ 160(e), (f).

Statement of the Case

The Petitioner, three local unions, has periodically attempted to organize certain employees of Red Ball and to dislodge the Union of Transportation Employees, an independent union, recognized by Red Ball (J.A. 386). During 1961 these Teamster Locals sought and obtained in December 1961 an NLRB representation election among these employees of Red Ball. With the active support of Red Ball (J.A. 335-341) the U.T.E. won the representation election.

During the course of the NLRB election the Teamster Locals were represented by seven election observers. The present unfair labor practice proceeding followed the election and charged discrimination as to six of these union observers, Horace Limbaugh, William Clem, Joe Shamblin, Gordon Hodgkins, W. T. Willingham, and Hall Nichols (J.A. 388). Five of these seven observers were discharged within a six-week period from March 27, 1962 to May 8, 1962, (J.A. 388). During this same six-week period two other active Teamster adherents were terminated by Red Ball, Elton Cathey

and H. J. Lewis. * The NLRB has found that these seven employees were unlawfully discriminated against by Red Ball and has ordered them reinstated to their former employment (J.A. 422). The propriety of these findings of the Board is the subject of the NLRB petition for enforcement in No. 17,994. The Union does not challenge any portion of those findings and believes that they are fully supported by the evidence. The Union does contend, however, that the Board erred in finding a failure of proof with respect to one of the violations alleged in the Complaint.

The Complaint alleged that one of the Teamster observers—Hall Nichols—had been discriminated against by Red Ball by being singled out for special checks and by being issued warning notices for alleged violations of company rules (J.A. 417). The Trial Examiner failed to sustain this allegation (J.A. 417) and the Board upheld the Examiner (J.A. 424).

Hall Nichols served with Willingham in Houston as one of the Teamster observers at the NLRB election in December of 1961 (J.A. 49). In addition, a letter of Nichols, in which he urged his fellow employees to vote Teamster, (J.A. 347) was reproduced by the Teamsters and used as campaign literature preceding the election (J.A. 20). The Examiner found that Nichols' union activity was known to Red Ball (J.A. 417).

* Lewis had been designated to Red Ball as a Teamster observer, but had not served (J.A. 84).

In late March of 1962, Nichols, an over-the-road driver, was followed for over an hour on one of his runs by the company safety director, Barr (J.A. 23-24). On May 8, Nichols was again followed by Barr for a number of miles (J.A. 27-28). On this occasion Barr gave Nichols two warning notices (J.A. 348-349) one for driving 50 miles per hour on an expressway in Houston (J.A. 236-237), on which the posted maximum speed limit was 50 miles per hour (J.A. 879). Barr's explanation for the two warning notices was that one of the notices was for speeding and the other was for Nichols' defiance of Barr's instructions that drivers were to follow the "posted speed limits within cities, towns, and communities." (J.A. 279).

The self-same Barr was the instrument utilized by the employer to effect the discharges of Hodgkins, Willingham, and Cathey. In the cases of Hodgkins and Willingham, both were fired following a period of surveillance by Barr (J.A. 398). In these two instances the Examiner refused to believe that Barr's surveillance was purely fortuitous and discredited Barr's assertions that he did not know which employees he had under surveillance (J.A. 398).

Despite these findings of the Examiner, he concluded with respect to the alleged harrassment of Nichols: (J.A. 417)

"I do not find, however, that respondent harassed Nichols by following him twice within a three-month period, and on one occasion giving him two notices instead of the usual one. This

allegation of the Complaint is hereinafter dismissed."

The Board adopted the Trial Examiner's findings, conclusions, and recommendations and dismissed the Complaint in so far as it alleged discriminatory treatment of Nichols (J.A. 425).

Statutes Involved

Section 7 of the National Labor Relations Act, 29 U.S.C. § 157 provides as follows:

"Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in Section 8 (a) (3)."

Section 8(a) of the National Labor Relations Act, 29 U.S.C. § 158 provides in part as follows:

"Sec. 8(a) It shall be an unfair labor practice for an employer—

"(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in Section 7;

"(3) by discrimination in regard to hire or tenure of employment or any term or condition

of employment to encourage or discourage membership in any labor organization: . . . ”

Statement of Points

The points upon which petitioner will rely are as follows:

1.

In finding that the General Counsel had not sustained his burden of proof with respect to the allegation that the employer had discriminated against Hall Nichols, the NLRB failed to consider competent, relevant, and conclusive evidence.

2.

The portion of the case which relates to Hall Nichols must be remanded to the Board for reconsideration in light of the evidence which it apparently failed to consider.

Summary of Argument

The Board has found that the employer, motivated by animus toward the Teamsters and favoritism toward the UTE, engaged in a discriminatory course of conduct directed against those employees who were Teamster observers in the 1961 NLRB election. The Board found that five of the seven observers were singled out and discriminatorily discharged by the employer. With respect to Hall Nichols, another observer, the Board has ignored the uncontradicted evidence of disparate treatment by the employer and evaded the inescapable con-

clusion that Nichols, too, was a victim of the employer's discrimination.

The Board either failed entirely to consider uncontradicted evidence as regards the discrimination directed against Nichols or alternatively failed to draw the only possible inference from the evidence, to wit, that Nichols was a victim of unlawful discrimination.

Argument

Petitioner does not challenge credibility resolutions made by the Trial Examiner, and, in fact, petitioner concurs with the Examiner's credibility resolutions and concurs with the Examiner's appraisal of the facts as regards the discharges of the various union adherents. Petitioner requests only that the reasoning employed in the cases of Limbaugh, Clem, Shamblin, Hodgkins, Willingham, Cathey, and Lewis be applied to the case of Nichols. If similar analysis of the uncontested facts is applied the same result is reached, namely that Red Ball violated the Act in its treatment of Nichols.

It is the proper function of a reviewing court "to reject a conclusion of the Board which disregards or fails to give proper cognizance to uncontradicted or well established facts." *NLRB v. Winona Textile Mills*, 160 F.2d 201, 208 (8 Cir. 1947). The reviewing court cannot uphold a Board decision that ignored uncontradicted evidence, *NLRB v. United Brass Works, Inc.*, 287 F.2d 689, 691 (4 Cir. 1961).
The Road Checks

Nichols was subjected to extended road checks by Barr twice within a six-week period, in late March of 1962 (J.A. 22) and on May 8, 1962 (J.A. 27). These road checks took place during the same period of time when Barr was engaged in entrapment of drivers Willingham and Hodgkins. Clearly, if improperly motivated, such surveillance would constitute discrimination in violation of Section 8(a)(3) of the Act. *NRLB v. Gate City Cotton Mills*, 167 F.2d 647 (5th Cir. 1948) enforcing 70 NLRB 238.

Barr's road checks were infrequent and made on a hit and miss basis (J.A. 392) over a common carrier system covering several states (J.A. 386). Yet, in a space of six weeks Barr made two extended road checks on driver Nichols, at the same time Barr was making checks on Willingham and Hodgkins, both of which resulted in their discharges. The Examiner has discredited Barr's assertion that his observations of Willingham and Hodgkins were coincidental, (J.A. 398) concluding that in both instances they were premeditated. Assuming the accuracy of these findings of the Examiner, the only conclusion possible is that the observations of Nichols were similarly preconceived * and thus discriminatorily motivated in violation of Section 8(a)(3).

The Warning Notices

Even should we assume that the observations of

* Barr's second check on Nichols took place on May 9 (J.A. 349), later the same day (J.A. 231) Barr spent three and one-half hours watching Willingham (J.A. 398).

Nichols were purely fortuitous and not violative of the Act, the issuance of the two warning notices was clearly such disparate treatment as to permit no other conclusion. The issuance of warning notices, a prelude to discharge under the practice of Red Ball Motor Freight, (J.A. 390) was disciplinary and thus, assuming the improper motivation, discrimination in violation of Section 8(a)(3), cf. *Oklahoma Transportation Co.*, 46 NLRB 1214, (1943) enforced in part 136 F.2d 42 (5th Cir. 1943).

The two warning notices were issued to Nichols on May 9, 1962. On the same day, Willingham was checked by Barr and fired (J.A. 231-235); on May 3, Hodgkins was checked by Barr and fired (J.A. 243-245); and on May 2, Joe Shamblin was unlawfully terminated in Dallas (J.A. 408).

Thus, in the space of one week three of the seven Teamster observers were discharged, and Nichols was the recipient of two warning letters. Even if one assumed that one of the warning notices was justified, * the second was so patently unjustified and unusual to be clearly discriminatory.

What was Barr's explanation for the issuance of the two warning notices? His belief that Nichols "just flagrantly and outwardly defied regulations or company rules and regulations." (J.A. 279). Barr was asked what it was that Nichols had flagrantly violated; Barr advised that Nichols had vio-

* It is interesting to note that according to Barr from July of 1961 through May 8, 1962, the only drivers that he could recall observing speeding were Willingham, Hodgkins, and Nichols (J.A. 880).

lated Barr's instructions that the men "were to follow the posted speed limits in the cities, towns, and villages." (J.A. 279) Thus, Nichols received two warning notices and harsh reprimands for driving between 45 and 50 miles per hour on an expressway in the city limits of Houston which had a posted maximum speed limit of 50 miles per hour.

If in fact Nichols did violate a company rule by driving up to 50 miles per hour on this expressway, it was at best an ambiguous rule that was contradictory under the circumstances, i.e., "that the drivers should observe the posted speed limits within cities." To issue a single warning notice for speeding was questionable. The issuance of the second warning notice predicated upon the same alleged offense can be explained only in Barr's antipathy toward the Teamster supporters and the employer's obvious scheme to rid himself of the strong Teamster supporters.

The Board's conclusion that the respondent did not "harass(ed) Nichols by following him twice within a three-month period, and on one occasion giving him two notices instead of the usual one," is unsupportable. Clearly the actions of the respondent were harassing by their very nature and respondent's improper motivation is self-evident.

Conclusion

For the reasons above stated, the Court should set aside that portion of the Board's Order which dismisses the Complaint in so far as it alleged dis-

criminatory treatment of Nichols and remand that portion of the case to the Board for reconsideration on the basis of the entire record.

The remainder of the Board Order should be enforced forthwith.

Respectfully submitted,

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8

BRIEF FOR INTERVENOR, RESPONDENT,
RED BALL MOTOR FREIGHT, INC.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

United States Court of Appeals
for the District of Columbia Circuit

FILED JAN 10 1964

No. 17,956

Nathan J. Paulson
CLERK

GENERAL DRIVERS, WAREHOUSEMEN AND HELPERS,
LOCAL UNION NO. 968, ET AL.,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
RED BALL MOTOR FREIGHT, INC.,

Respondent,

Intervenor.

No. 17,994

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

RED BALL MOTOR FREIGHT, INC.,

Respondent.

On Petition to Review Part of an Order of the National Labor Relations Board
Dismissing a Portion of the Complaint and
On Petition to Enforce Part of the Same Order

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January 3, 1964.

(i)

STATEMENT OF QUESTIONS PRESENTED

The parties have agreed upon the questions presented, and they are as stated in the brief for the National Labor Relations Board, Respondent in No. 17,956 and Petitioner in No. 17,994.

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United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 17,956

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 968, ET AL.,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,
RED BALL MOTOR FREIGHT, INC.,

Respondent,

Intervenor.

No. 17,994

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

RED BALL MOTOR FREIGHT, INC.,

Respondent.

On Petition to Review Part of an Order of the National Labor Relations Board
Dismissing a Portion of the Complaint and
On Petition to Enforce Part of the Same Order

BRIEF FOR INTERVENOR, RESPONDENT,
RED BALL MOTOR FREIGHT, INC.

COUNTERSTATEMENT OF THE CASE

A. PROCEEDINGS AT THE BOARD

After hearing on charges filed by General Drivers, Warehousemen and Helpers Local Union No. 968, et al. (hereinafter called the "Union"

or "Teamsters") and a complaint issued by a Regional Director of the National Labor Relations Board (hereinafter called the "Board") against Red Ball Motor Freight, Inc. (hereinafter called "Red Ball") a Trial Examiner of the Board issued an Intermediate Report and Recommended Order on March 5, 1963. His Recommended Order required Red Ball, a motor carrier, to reinstate one mechanic (Clem) and six truck drivers (Cathey, Limbaugh, Hodgkins, Willingham, Shamblin and Lewis.) The charges and complaint as to another driver (Nichols) were dismissed (J.A. 384-423). Red Ball and the Board's General Counsel filed exceptions and supporting briefs, and on June 26, 1963, a three-member panel of the Board issued a Decision and Order adopting in toto the findings, conclusions and recommendations of the Trial Examiner and adopting his Recommended Order (J.A. 419-423) as the Order of the Board (J.A. 424-425). Case No. 17,956 was then brought in this Court on petition by the Union to review and set aside the dismissal of that portion of the complaint dealing with Nichols. Case No. 17,994 was brought here on petition by the Board to enforce the Board's Order as to Clem, Cathey, Limbaugh, Hodgkins, Willingham, Shamblin and Lewis.¹

B. BACKGROUND

The Board's brief (p. 3), like the Examiner's Report (J.A. 386-387), cites as relevant background facts, upon which its position in these cases principally depend, that in 1948 the Teamsters filed charges against Red Ball resulting in the disestablishment of the National Association of Motorized Common Carrier Truck Line Employees and that thereafter the Union of Transportation Employees (hereinafter called the "UTE") was formed and became bargaining representative of Red Ball's employees. See NLRB v. Red Arrow Freight Lines, Inc., et al., 77 NLRB 859, 180 F.2d 585 (5 Cir.), cert. denied 340 U.S. 823. The Examiner's Report,

¹ The facts and principles applicable in Case No. 17,956 are adequately presented in the Board's brief and will not be discussed herein.

which was adopted by the Board without change, does not, however, reflect any consideration of the fact, which had been cited both to the Trial Examiner and the Board, that after the UTE was formed there were further proceedings in contempt in which the Fifth Circuit found that there was no contempt or violation of its order and, in effect, that the UTE was a bona fide labor organization. Teamsters v. Red Arrow Freight Lines, 213 F.2d 260 (5 Cir.).

On the basis, apparently, of the 1948 case, the Board's brief (p. 3) states that the Union "has been attempting to organize the Company's drivers for many years." The Examiner's Report says "for some years" (J.A. 386). The Board, in adopting the findings, conclusions and inferences of the Trial Examiner (J.A. 387), established this inference as the basis for all other inferences. The record, however, is barren of evidence showing any organizational attempts by the Teamsters at Red Ball between 1948 and 1961.

The Board's brief (pp. 4-5) and the Examiner's Report (J.A. 387-388) also cite as relevant background that, following the Teamsters' resumed organizational activities and prior to the Board representation election of November 30-December 1, 1961 (in which the Teamsters were defeated), Red Ball urged its employees to support the UTE in preference to the Teamsters. It should be noted here that Red Ball was exonerated of any independent violations of Section 8(a)(1) of the National Labor Relations Act (61 Stat. 136, 73 Stat. 519, 29 U.S.C. §§ 151 et seq.). Although Red Ball's propaganda was characterized by the Trial Examiner as "lurid" (J.A. 388), it was found that it was at all times free and lawful. Red Ball was not charged with supporting or dominating the UTE. It is conceded that it is not unlawful for an employer to favor one union over another.

The Board's brief (p. 4) also notes as background that in July 1961, five months before the Board-conducted election, there was an election for the Presidency of the UTE in which one James Hester opposed one R. S. Craig. The Board's brief fails to make clear, however, that the

Examiner (and by adoption, the Board) rested the decision in large part, on what the Examiner called a "reasonable conclusion" that Red Ball knew that the employees named in the complaint were active in the Teamsters and were aware that they were leaders of a dissentient group in UTE and supported Hester as against Craig (J.A. 387). This conclusion, which the Examiner characterized as "reasonable" and which was one of the fundamental bases of the decision, was in fact erroneous and unsupported by any evidence, substantial or otherwise. There is not a scintilla of evidence to support a finding that Hester was a member of the Teamsters at the time of the Hester-Craig election; and, if he were a Teamster, there is no shred of evidence to indicate, or even imply, that Red Ball, its agents or officials were aware of such connection.² Indeed, Red Ball could have had no reason to believe that employee Hester was anything but a UTE member since the election for President of the UTE was an intra-union election. In this regard, it should be noted that there has been no contention that Red Ball formed or dominated the UTE or that Craig was Red Ball's instrument (J.A. 387). Moreover, the Hester-Craig election was some five months before the Board-conducted election and some several months before anyone became active on behalf of the Teamsters, or before Red Ball became aware of activities, such as acting as observers, indicating support of the Teamsters. It is obvious that the Trial Examiner merely suspected that Hester was a Teamster (J.A. 387), a suspicion not shown to be shared by Red Ball. Indeed, the record shows that interest in or interference with UTE problems was specifically denounced by Red Ball when it received a copy of a letter from Shamblin indicating an intra-union squabble. (See Shamblin's testimony at pages 466-469 of the transcript.)

² In this instance, as in others in this case, there is no way to serve the Court by making transcript or record references, since there are none to make. This is the great difficulty in negative evidence.

C. CIRCUMSTANCES OF THE DISCHARGES AND LAYOFF

1. Economic Layoff -- William Clem

William Clem, a mechanic, in the trailer shop, was laid off in mid-April, 1962. It is undisputed that several other employees in the shop were laid off at the same time and that the decision to lay off was economically motivated (J.A. 415). Nevertheless, the Trial Examiner concluded that Clem was constructively discharged because of his activity on behalf of the Union (J.A. 416). In support of this conclusion, he noted that some weeks previously, on February 5, Red Ball's maintenance supervisor in Dallas, Harold Odum, offered Clem a job in the Denver terminal, which Clem refused. In further support of this conclusion, and apparently as the principal basis for it, he noted that at the time of the lay off, when Odum was meeting with the affected employees and the question of "bumping" arose, Odum failed to correct an erroneous statement by Clem that he, Clem, had no right to bump because he was not a member of the UTE (J.A. 415-416). The Examiner and the Board concluded from these facts that Odum would have advised Clem of his right to bump had Clem not been a Teamster adherent. This, the Board concluded, made Clem's termination a constructive discharge.

With respect to the February 5 incident, the Trial Examiner's findings merely state that "Odum offered Clem a job in Respondent's Denver terminal, but he refused it" (J.A. 415). In the Examiner's Conclusions, however, this becomes: "On a previous occasion Odum had tried to persuade Clem to transfer to Denver, and he had refused" (J.A. 416; emphasis added). The record is void of any evidence tending to support the Examiner's conclusion that there was persuasion, although it does support his express finding that Clem was unhappy in Dallas and was offered a job in Denver (J.A. 113-114, 303). Respondent's operation in Denver is under a Teamster's contract (J.A. 3, 114, 303), and Odum cleared the transfer with Mr. Herb Bailey, a Teamsters representative in Denver (J.A. 3, 303). Although Clem gave family considerations as his reason for rejecting the offer of a higher-paying job in

Denver (J.A. 115, 304), his real reason appears to have been that he became convinced, from what he was told by a Teamsters official in Dallas, that Bailey did not exist (J.A. 115). Odum's offer was a genuine one, as is evidenced by the fact that, a few days after Clem rejected it, another man was transferred to the Denver job (J.A. 304).

With respect to the conversation about bumping, the Trial Examiner correctly found that "Odum said that anyone who had the right to bump could do so" and that "Odum did not say that Clem could not bump" (J.A. 415). Odum did not advise Clem individually that he had a right to bump. But it is clear that Clem did not ask if he could bump but merely "announced" (to use the Examiner's word) that he did not have bumping rights because he did not belong to the UTE (J.A. 415). There is no evidence that a comment by Odum was expected or would have been regarded as appropriate. Clem, it must be noted, was represented by a labor organization and was aware, or should have been aware, of his contractual rights. At any rate, he had recourse through the contract grievance procedure of his UTE contract.

Furthermore, it is significant that Odum apparently did not address any of the group individually. He did not tell any of the affected employees that he had a right to bump; he limited himself to telling the group that anyone who had bumping rights would be permitted to bump. Odum testified (J.A. 308):

"I told them they were at liberty to exercise their seniority to bump in any job they had seniority to get and qualifications to hold. I addressed it to the whole group."

See also the testimony of witness Millican, who was also present, that Odum addressed "all of us" (J.A. 259).

2. Discharges For Accidents

(a) Elton Cathey

The Board's decision (actually, the decision of the Examiner which was adopted by the Board) starts off with Elton Cathey by stating

that it has already been found that he served as an observer for the Union at the Board election (J.A. 402). The reference to the earlier finding is to the background findings of the Examiner's Report (J.A. 388). This basic finding about Cathey was entirely erroneous. The names of the Teamsters observers were stipulated between the parties in the original hearing before the Trial Examiner at page 49 of the transcript of testimony. Cathey's name is not mentioned, for, in fact, he was not an observer for the Teamsters, and the Charging Party so conceded in its brief to the Board.

Removing this error of fact, there is no evidence left upon which to base a finding of discriminatory discharge of Cathey.

Because of this error the Trial Examiner concluded that the reason assigned by Red Ball for the discharge of Cathey was a pretext. The record shows that Red Ball discharged Cathey because of an accident where two wheels ran off of his tractor being driven from Shreveport to El Dorado, Arkansas. The Trial Examiner found that Cathey had checked his equipment in Shreveport, Louisiana, and that the wheels coming off the truck was an event which was not attributable to Cathey's negligence since he could not in any event have detected the condition of a wheel in a routine check.

In so finding, the Trial Examiner completely overlooked and disregarded testimony which would detract from that conclusion. Witness Sanders testified that when he examined the wheels and the truck later on, the holes for the lug bolts were elongated in a radial direction approximately twice the original diameter (J.A. 204). Sanders, the shop foreman who had been a mechanic for nineteen years (J.A. 207) further testified that a driver can tell visually whether or not the lugs holding the wheel are loose (J.A. 206). From his personal experience, he estimated that Cathey's tractor had been driven several hundred miles with the nuts in a loose condition (J.A. 719, 720).

Witness Rex M. Murphy testified that he was a mechanic third class employed by Red Ball and was sent to the scene of Cathey's accident

to assist Cathey (J.A. 210). When Murphy got to the scene of the accident he met Cathey and found only one wheel which was represented by Cathey as being the one that hit an automobile parked on the side of the road. The other tire of the dual wheel was found approximately three-quarters of a mile to one mile down the highway in the direction from which Cathey had been coming (J.A. 211). While talking with Murphy, Cathey made a completely spontaneous remark, "I expect I will be fired for not checking my equipment" (J.A. 213).

- This statement, made spontaneously and in the immediate context of what actually happened, belies the fact that Cathey had checked his equipment previously in Shreveport.

None of this evidence was considered by the Trial Examiner or the Board, yet it is of such substance that it cannot be lightly cast away. Cathey was a professional driver, having driven for Red Ball for some years, and was supposed to be a competent driver, yet he drove a truck for approximately a mile after one of his wheels had already run off the tractor. The lugs holding the wheel to the tractor were loose enough to allow the wheels to bounce on the studs to such extent that they were "wallowed out". Surely, Cathey should have detected some form of vibration or at least known that something was wrong. Even if he could not, he should certainly have been aware when the first wheel ran off the truck. Yet the truck travelled for approximately a mile before it stopped. It stopped then only because the second wheel had run off and struck a parked automobile.

Whatever the Trial Examiner thought as to whether or not Cathey should have known of this condition in time to prevent an accident, if he had considered the testimony as to another incident by the General Counsel's own witness, Gordon Hodgkins, he would have realized that Cathey was negligent. Hodgkins testified (J.A. 166), "I have had some experience of that same thing about to happen, and I have had an experience where the lugs have been broken on another occasion."

He went on to testify that on that occasion he "saw the wheels were running to where there was bound to be something wrong. They are not running straight in line, and I stopped, and I saw I had that problem although it wasn't complete." On questioning from the Trial Examiner, he stated, "I saw the wheels were out of line. I knew there was something wrong."

Considered as a whole, the record establishes (1) that the Examiner's and the Board's decision as to Cathey was based upon the erroneous factual assumption that he had been a Teamster observer at the Board election, and (2) that Red Ball's discharge of Cathey was entirely justified by, and was based upon, the circumstances of his accident.

(b) Horace Limbaugh

The Trial Examiner found (J.A. 401) that while Limbaugh's termination was by way of resignation, it was in fact a constructive discharge based on discriminatory treatment. There is, however, in the record no evidence of discriminatory treatment.

Between 1958 and March of 1962, Limbaugh was involved in five backing accidents (J.A. 45, 47-48). The events as set out by the Trial Examiner in his intermediate Report (J.A. 400) are basically correct, but from that point he begins to inject his suspicions as to what happened, simply stating, "I accept Limbaugh's version as the true one" (J.A. 401). The Trial Examiner and the Board failed to assert any reasons for these conclusions or to identify the logic employed in arriving at them.

When Limbaugh was warned by the Terminal Manager Lane about his failure to file an accident report regarding the March 23, 1962, accident, not too much was said. As was usual in the Respondent's procedures, as found by the Trial Examiner (J.A. 400), Limbaugh was suspended for the term of the investigation. Limbaugh's only concern was for how long the suspension would be. Most investigations of this nature did not take more than one day, but Lane could not forecast the length of the investigation and advised Limbaugh that he could find out at the

general offices (J.A. 42-43). He further asked Limbaugh to report to him the next morning (J.A. 194, 661). All of this occurred at the terminal in Dallas, which is at the same location as the general offices. If Limbaugh had been as concerned about the length of his suspension as he indicated during the trial, certainly he could have inquired at the general offices on the same terminal lot, or, at the very least, he could have returned the next morning. Instead, however, Limbaugh simply conjectured that Charles Fisk, Respondent's Vice-President in charge of operations, was "after him" and that he was being suspended because of his Teamster activity. Terminal Manager Len stated he knew nothing about that and Limbaugh next asked if he could work during his suspension for some other company, to which Lane stated that he could not because it was against company policy (J.A. 40C-401). Limbaugh testified that, at that point, Lane suggested that Limbaugh resign (J.A. 49, 401), while Lane testified that, at that point, it was Limbaugh who said, "I think I will just resign" (J.A. 184, 401).

The Trial Examiner gives, and can give, no reason for his acceptance of Limbaugh's statement. It is obvious, however, that Lane's version is much the more logical and reasonable since there would be no point in asking Limbaugh to resign if he was already under suspension. If Limbaugh felt the situation was as hopeless as he indicated that it was, certainly he would be the logical one to make the statement, "I think I will just resign". At any rate, there is no evidence that Limbaugh was being discriminated against because of any union activity. There is certainly no discriminatory treatment of Limbaugh. The record is clear that the same policy was applied to him as was normally applied to any other employee in the same situation.

Even accepting the Trial Examiner's unsupported conclusion, it should be pointed out that Limbaugh did not have to resign. Had he made inquiry at the general office, he could have determined that he would have been paid anyway and given a better estimate of the length of the investigation than Lane could have given him, since the investigation

was being carried on from the general office. It is clear that Limbaugh resigned simply because he was of the opinion that someone was "after him". This was his personal opinion, though there is no evidence that such was the case, and the resignation was his choice.

3. Discharges For Speeding

(a) Gordon Hodgkins

The Trial Examiner apparently found that because Hodgkins supported Hester in the 1961 UTE election for President against the incumbent Craig, and was called in by Barr on July 17, 1961 and reprimanded for speeding, he was being discriminated against because of his support of Hester. As has been pointed out, there is no evidence that Red Ball's officials were aware of any such connection. That warning was not issued as a result of union activity.

On April 24 or 25, 1962, Safety Director John Barr held a safety meeting in Dallas (J.A. 227). These meetings were being conducted because of the increase in accidents in March of 1962 and it was necessary to tighten up the safety program (J.A. 226). These accidents were happening primarily inside the city limits of towns and communities (J.A. 226, 227).

On May 3, 1962, following the safety meeting, Barr set up a radar in Corsicana, Texas, to check Red Ball equipment moving between Houston and Dallas. Shortly after midnight, a truck came through Corsicana entering the city limits and traveling at a speed of 35 miles an hour, five miles in excess of the posted speed limit. Barr followed the truck, which stopped when the driver got out to check his tires. At that time, Barr found the driver to be Hodgkins (J.A. 243-244).

The Trial Examiner, however, inferred that Barr knew it was Hodgkins in the truck because earlier in the day Hodgkins overheard the dispatcher in Houston say over the telephone to someone, "But Mabra is due out first", then silence, then, "Well, I will get them both out by

8:00 o'clock some way" (J.A. 394). It was on this fragmentary suspicion and the fact that that was the first time Hodgkins had been dispatched before 9:00 P.M. that the Trial Examiner based his finding of discrimination.

The Examiner ignored the fact that, while it wasn't the usual practice for Mabra to pull the first load, he had done it before (J.A. 159). The most important point about Hodgkins is that he actually was traveling at 35 miles an hour, five miles per hour in excess of the posted limits of 30 miles. The Trial Examiner concedes that Hodgkins was aware of this and admitted it (J.A. 395). The discharge of Hodgkins for speeding after he was personally observed to be speeding by Barr and after he had received a warning is in absolute accord with company policy and Barr's practice. Hodgkins was caught speeding at night and Barr could not possibly have known in the glare of oncoming headlights that it was Hodgkins who was driving, particularly when other trucks had gone through and more were due. The Trial Examiner concedes that other trucks had gone through but had not been found to be violating the speed limit. There is no discrimination here (J.A. 394).

(b) W. T. Willingham

Though the Trial Examiner mentions that Willingham became active in signing up members for the Teamsters in the summer of 1961 (J.A. 395), there is no evidence that Red Ball was aware that Willingham had any connection with the Union until he served as a Teamster observer at the Board-conducted election.

No action was taken against Willingham in any way until March of 1962, when he was given a written warning for exceeding the 10 miles per hour limit on Red Ball's own property. This written warning was issued to him along with warning notices to two other employees who were also found to be speeding, in accordance with Barr's practice. There appears to be no discrimination here. Willingham was not accorded any disparate treatment nor did other employees receive better treatment

than he. He was speeding. He was warned. Others were speeding, others were warned (J.A. 395). On May 9, 1962, Barr, while in Houston conducting safety meetings, followed Red Ball equipment to follow up and enforce safety regulations (J.A. 395, 396). Barr found equipment at City Dock No. 18 at the waterfront and waited until it left. He did not know who the driver was. When the driver left, Barr followed the truck and found it to be traveling at one point at 45 miles per hour in a 40-mile zone. It then proceeded through a red light. At the terminal, Barr found out who the driver was and called him into the office (J.A. 396).

To dispose of this matter, the Trial Examiner and the Board simply state, "I cannot believe that Barr waited for an hour and a half at the Houston dock until Willingham had loaded his truck and consumed another two hours following him throughout the streets of Houston" (J.A. 398). The basis for this disbelief of uncontradicted testimony does not appear in the record. The following facts, however, do appear in the record: Willingham was found speeding in May, and having been previously warned, was discharged, in accordance with company policy.

Willingham testified that he had never received a traffic violation nor a written warning and when asked if he had ever been convicted of a felony, stated, "No" (J.A. 16). Yet, the evidence is clear that Willingham had received a traffic violation (Respondent's Exhibit No. 15, not included in the Joint Appendix) showing that he had run a boulevard stop sign and had received a written warning in February, 1962, concerning a shipment of rubber consigned to General Tire & Rubber Company in Waco, Texas (J.A. 17 and portions of transcript page 85 not included in the Joint Appendix). Moreover, evidence was introduced to the effect that Willingham had been convicted of a felony (Respondents' Exhibits 13 and 14, not included in the Joint Appendix).³ Willingham's falsity in

³ It was agreed by all counsel that the General Counsel for the Labor Board and the Charging Party would be allowed time to come forward with evidence, if any, that the Willingham who testified and the Willingham named in Respondent's Exhibits No. 13 and No. 14 were not the one and the same man. Such information or evidence has not been brought forward.

this instance was two-fold but was not considered by the Trial Examiner.

Further, there is evidence that Barr conducted several safety meetings in Houston in early May of 1962, and during the period of time he was there, made seven or eight spot checks at random, following and observing the trucks in the city (J.A. 273-275). Willingham was not just picked out and followed. The conclusion of the Trial Examiner and the Board that Willingham was discharged because he served as a Teamster observer is not supported by substantial evidence in the record.

4. Terminations For Other Causes

(a) Joe Shamblin

All parties are substantially agreed as to the facts surrounding Shamblin. The only discord is in the motive of the discharge. The Board connects two unrelated facts and concludes that Shamblin was discharged simply because he had been an observer for the Teamsters. There is no support in the record for that conclusion.

After Shamblin apparently lost an intra-union squabble with the UTE, Shamblin indicated to Red Ball that he was somewhat dissatisfied with the UTE and with his job. Red Ball Vice-President Fisk later advised Shamblin that he would help Shamblin transfer to Denver if he preferred the Teamsters contract (J.A. 122, 124).

Around the end of March, 1962, shortly after Limbaugh resigned, Red Ball officials Fisk and Lane saw a group of eight to ten employees on the parking lot. Shamblin was in the group (J.A. 125, 126). It was undenied and uncontradicted that it was rather unusual to see the men group up on the lot in this fashion (J.A. 196). Being suspicious that there might be a fight, Lane and Fisk went over to the group. Fisk did most of the talking and directed it to Shamblin, feeling that Shamblin was responsible for the grouping. Shamblin said that he was talking about the tires on his pick-up when Fisk asked what they were talking about. Fisk said, "You just can't leave it alone, can you?" and Shamblin asked what he was talking about and Fisk replied, "You just can't keep

from congregating these people and stirring this thing up even after we have reached a decision on it" (J.A. 197, 198).⁴ During this conversation, Shamblin went on to say that the company ran the business the way Cuba was being run (J.A. 186-187). Shamblin made other disparaging remarks about his employer in front of other employees (J.A. 186).

On April 6, Shamblin had an accident while picking up a load at Sunshine Biscuit Company (J.A. 128). He advised the dispatcher of the accident and was told to bring the truck into the shop and told to report the accident (J.A. 129, 422, 423). Shamblin was called in by Lane, asked to give a report and was suspended until the accident could be investigated the next day. He advised Shamblin to come in the next morning.⁵ Shamblin and Lane had some discussion about the time they were to meet the following morning, Shamblin finally remarking that if 7:00 A.M. was too early for the "big shots", he would come in later. Lane advised him to come in at 5:00 A.M., but Shamblin was late to that meeting (J.A. 187, 188). According to both Shamblin and Lane, they discussed the accident and Lane advised Shamblin that it was a chargeable accident (J.A. 130, 188). Lane then discussed Shamblin's attitude toward his job, his supervisors and the company and said that he thought this attitude was affecting Shamblin's work since his mind was on other things. Shamblin admitted that he had made remarks about Mr. Henry English, the principal owner, and stated that he was ashamed of English for being part of a false union. Shamblin said he was "for" a thirty hour week and English had "let all the employees down by engaging with another union." Lane advised Shamblin that there would have to be some improvement in his attitude and that if he was involved in another accident, he would receive disciplinary action (J.A. 131, 188, 189).

⁴ The decision Fisk was referring to was the outcome of the Board-conducted election, which the Teamsters Union lost.

⁵ This is the same kind of suspension that was given to Limbaugh in accordance with company policies regarding accidents indicating negligence, backing being a prima facie case of carelessness. There is no disparity of treatment here.

As found by the Trial Examiner, later in April, Shamblin was switched from the job to a job he had bid on, which involved handling of smaller and more varied assignments and required more attention (J.A. 407).

On April 25, 1962, Shamblin signed for receipt of freight when he was aware that he had not picked up all of the freight, and knew that Red Ball was liable financially for it (J.A. 134, 135). (During the course of Shamblin's employment in 1958, he received three warnings for failure to check freight and was given a letter of warning on April 8, 1958 (General Counsel's Exhibit No. 56) (J.A. 120)). On May 1, 1962, Shamblin had a pick up to make from White's Auto Supply, involving approximately eight to fifteen different shipments of about 300 to 400 pieces (J.A. 138). While there, Shamblin failed to pick up six tires and a sign going to one consignee; he then returned to the dock (J.A. 138). Although he failed actually to pick up the freight, Shamblin nevertheless signed a bill of lading acknowledging that he had received it. He advised Shamblin that Red Ball drivers were supposed to be qualified to check freight and pointed out to Shamblin that he must have other things on his mind to sign a bill of lading and then not pick up the freight. (See J.A. 198, where the evidence does not support the Trial Examiner's conclusion that forty to fifty OS & D shortage reports are issued daily. It appears in the record that this forty to fifty would include shortage delivered to consignees which would also include shortages properly noted and properly handled with no employee negligence) Lane pointed to this mishandling of freight as an example of Shamblin's preoccupation with other matters and advised Shamblin that if it happened again, he would be discharged (J.A. 139, 140, 189, 190). Upon hearing this, Shamblin said that he could not be fired and Lane advised him that if it happened again, he would be fired (J.A. 190).

This same day, approximately two or three hours later, Lane received a call on a tracer and found it necessary to make a special run to get the shipment to the customer that day. This was the White's Auto

Supply shipment. Lane discovered that this was another discrepancy of Shamblin's (J.A. 190).

Prior to calling in Shamblin, Lane called UTE Councilman Wayne Sledge and advised Sledge that he was going to discharge Shamblin and asked Sledge if he had any objections. Sledge, Shamblin's exclusive bargaining representative, said that under the circumstances, he did not see how Lane could do otherwise (J.A. 191). Lane told Shamblin that he was discharged and handed him his check. At the same time Shamblin was discharged, he was handed a letter of warning dated May 2nd (General Counsel's Exhibit No. 58; J.A. 142).

Shamblin was discharged because of his poor attitude which he had been warned about and which had not improved. This attitude is typified by the answer he gave Lane when he was warned about the mishandling of freight. Shamblin said he couldn't be fired and Lane advised him that if it happened again, he would be fired. It did happen again and he was fired. There is no evidence of any nature which even remotely indicates that Shamblin was discharged because of his Union activities or for serving as a Union observer.

Shamblin was accorded exactly the same treatment handed anyone else. Shamblin testified he knew of other mistakes made by drivers in handling of freight, but did not know whether they had been warned about such mishandling (See transcript, p. 441, not included in Joint Appendix). He was aware that the employees had been warned against this mishandling as a group. Further, Shamblin had been warned on three different occasions prior to his becoming either a UTE Councilman or a Teamster adherent (J.A. 120).

When Lane discovered that the Western Electric error was not the only one, but that Shamblin had even later made another similar error, he necessarily concluded that Shamblin's attitude had not improved and that there was little likelihood for it to do so in view of Shamblin's remarks while being orally reprimanded. He therefore decided to discharge Shamblin immediately.

Apparently, it is the Board's contention that Shamblin was discriminated against by the mere fact that he had received a warning notice while he was a Teamster adherent. However, Shamblin's own testimony establishes that he had received warning letters previously on December 14, 1960, while he was holding a UTE office (J.A. 147-148). Shamblin's attitude toward his work is patent on the record, which shows that it not only justified his discharge but was, in fact, the reason for his discharge.

(b) H. J. Lewis

The Trial Examiner and the Board noted that Lewis became active in the Teamsters in late 1960 and obtained signatures of drivers to Teamster petitions (J.A. 410). There is not a shred of evidence in the record that any Red Ball official was aware of this. Yet, the Trial Examiner infers that on May 2, 1961, when Lewis was placed on probation it was because of his activity on behalf of the Teamsters (J.A. 410, 413). There is no evidence in the record to support this inference, just as there is no evidence of company knowledge of Union activity.

In his Intermediate Report, the Trial Examiner gave the Board to believe that Lewis was placed on probation for a year simply because he had parked a trailer on a gravel lot at the Red Ball terminal in Greenville, Texas, without putting a dolly under it to prevent its sinking into the ground. The Examiner made a point of noting that the trailer did not sink (J.A. 410). The Trial Examiner failed to note, however, or apparently even to consider, that during the course of Lewis' employment, he negligently dropped the trailers on various separate occasions, the first being on December 3, 1960 in Greenville, Texas. Six days later, he was guilty of the same negligence in Tyler, Texas. On February 6, 1961, Lewis was guilty of the same act in Clarksville, Texas. As a result of these three incidents, Lewis was interviewed on February 11, 1961, and was told to improve his performance. After the oral warning on February 11th, he was again guilty of the same negligence of not blocking up under the dollies on April 26, 1961. As a result of this offense, he was

interviewed by Dale Scruggs on May 2, 1961, and placed on probation for one year (Respondent's Exhibit No. 1; J.A. 360). These violations by Lewis were not denied or contested. Respondent's Exhibit No. 1 was written seven months before the Board-conducted election. At the time, Red Ball was entirely unaware of any union affiliation on the part of Lewis and there is no evidence in the record to the contrary.

At the time Lewis was given his notice of probation, he was also cautioned by Dale Scruggs that he had been causing trouble among the drivers by telling them they had "run arounds" coming to them when in fact they did not (J.A. 315-316, 410). There is no evidence of any connection with this admonition to Lewis' union activity. Even if it were true, there is no basis for any inference other than that Lewis was being cautioned about advising his fellow employees with misinformation which was causing loss of time to Scruggs.

The Trial Examiner and the Board make much of the fact that Lewis was given a warning in January, 1962, about an incident in Sherman, Texas (J.A. 411). But it should be noted that Lewis was not discharged for this warning, even though he was on probation at the time. By this time, the company was aware of Lewis' union affiliation since they had received notice that Lewis would serve as an observer during the Board-conducted election. Lewis, however, did not act as an observer (J.A. 85). If Red Ball was going to fire Lewis because of his union activity, they had the perfect opportunity in January and did not have to wait until March.

In March, Lewis was dispatched to pick up a load of paper at Ludlow Plastics in Homer, Louisiana. The load consisted of thirty rolls weighing 39,364 pounds. Lewis testified that he and "two more guys working down there" [at the Ludlow docks] "rolled approximately fifteen rolls on the trailer". Then, Lewis testified, they rolled them off and one of the other men took a fork lift and set them up in the trailer (J.A. 96). After making this pickup, Lewis returned to Shreveport and claimed hourly pay for loading time, approved by another driver, whose initials

are "B. H." (J.A. 323). Lewis later turned in the trip ticket and the log and made claim for loading tonnage on the trip (J.A. 96). When the trip ticket arrived at the head offices, the payroll department brought it to the attention of Dale Scruggs because it showed excessive tonnage and detention time at Homer (J.A. 317). The payroll department had been under instructions to report any out of the ordinary claims (J.A. 317). Scruggs noted that the tonnage had been okayed by the initials, "B.H.", but he did not know who "B. H." was (J.A. 317, 318).

Because under interstate tariffs on file with the Interstate Commerce Commission, freight rates are affected by the loading and unloading of certain freight, Scruggs wrote a letter to Lewis (Respondent's Exhibit No. 2; J.A. 361) and asked if Lewis actually assisted in the loading of the 39,000 pounds. The applicable tariffs specified shipper loading and as the shipper, Ludlow Plastics (Respondent's Exhibit R-20; J.A. 362-363), this paper could only be loaded by fork lift and standing upright. Lewis wrote back on the same letter stating that he did help load and that this was okayed by Bill Hogan (B.H.), another line driver, because no one else was there except a night watchman. This had been done despite the bulletin posted at all terminals, stating that under no circumstances will anyone except supervisors or night watchmen approve time or tonnage claims on trip tickets (Respondent's Exhibit No. 20; J.A. 362).

The Trial Examiner noted that the difference in pay on a tonnage rather than an hourly basis was \$1.88 in favor of Lewis but that this was not the complaint against him. Rather, it was that he did not help in the loading. In this, he is absolutely correct. The Trial Examiner, however, went on to say that Lewis testified that he did help load, and there is no evidence to the contrary, though other witnesses were available in the persons of Ludlow's dock employees. The Trial Examiner's conclusions regarding Lewis fail to consider material evidence. In preparing for trial, Respondent Red Ball sought to produce the letter from Ludlow Plastics which grew out of the investigation of Lewis'

claim. Red Ball was unable to find it, but was able to secure a letter from Ludlow Plastics (Respondent's Exhibit No. 21; J.A. 362) which makes reference to the previous communication and sets out that the rate applicable is affected by who does the loading and unloading.

It is obvious from the whole record that possibly Lewis did roll some of the paper onto the truck but, as he testified, he rolled them off and thereafter the loading was done by a fork lift. Whatever work he did was for nothing and certainly killed time which he would have been paid for in any event. But the Trial Examiner concludes that this is "assisting" and there is no evidence to the contrary, according to him. However, whether or not Lewis helped in the loading is immaterial since the Respondent Red Ball was of the honest belief that Lewis had not helped in the loading and that, if he had, then another rate was applicable to the tonnage being moved on Red Ball trucks. If such were the case, Red Ball would have been in violation of Interstate Commerce Commission regulations.

The Examiner's (and the Board's) basic error with respect to Lewis is set out in the original conclusion of the Trial Examiner (J.A. 413) where he finds that "Respondent's whole course of conduct toward Lewis convinces me, and I find, that it discharged him on May 28, 1962 because of his activity on behalf of the Teamsters and not, as it claims, for legitimate business reasons." In pursuit of this aim and purpose, says the Trial Examiner, Red Ball first made the probationary conditions. Such a conclusion is pure speculation and suspicion and is not based on evidence, there being no evidence that Red Ball was aware of Lewis' union affiliations or activity at the time he was placed on probation. Certainly, the record demonstrates that his performance prior to that justified a probationary status.

The strongest point that can be made with respect to the dishonesty of Lewis in claiming pay for loading time, when in fact, no loading time was involved, has to do with the tariff provisions introduced in evidence. This tariff provision (Respondent's Exhibit No. 17) expressly

provides that the rate which was applied in this case only applies when the entire loading and unloading is performed by the shipper and the consignee (J.A. 181, 182, 604).

5. Red Ball's Safety Program

Prior to 1961, when John Barr was hired as Safety Director, Red Ball's safety program was a rather haphazard operation with each Terminal Manager conducting its own safety program. The overall safety program was being handled by Charles E. Fisk and Dale Scruggs, who were not devoting full time to the safety program, but administered it on a hit and miss basis (J.A. 216). To alleviate this situation, Red Ball officials determined to institute an effective safety program to be overseen by John Barr, who was directly instructed to institute a program to reduce the high frequency of accidents (J.A. 214).

After spending the first few months orienting himself and compiling figures, Barr then began to effectuate his program by spot checking tachograph charts, ICC logs and other resources, conducting safety meetings and acquainting the employees with the safety program and the standards expected of them. As found by the Trial Examiner, in July of 1961, Barr examined a "handful" of tachograph charts for speed violations. Among these tachograph charts were ones showing violations by Hester, Cathey, Hodgkins and an employee named Mayberry (J.A. 393, 397). Barr found violations by Hodgkins, Hester and Cathey and issued warnings to each of them. He did not issue a warning letter to Mayberry because, as the Trial Examiner noted, he was mistaken in believing it in error. But because Barr could remember only those four names, although he testified there were others, the Trial Examiner found that Barr had examined only those four (J.A. 393). This ignores the fact that Barr had good reason to remember those names, since those were the names that were involved in violations or, in the case of Mayberry, in a suspected violation.

In the case of Hester, it has already been noted that the Trial Examiner created a prejudicial inference against Red Ball when he found out at trial that Hester was possibly a Teamster adherent. In July of 1961, however, Red Ball was not aware of Hester's affiliations and there is no evidence in the record to indicate that Red Ball had reason to believe that Hester was anything but a UTE member. Nine days after Hester was given a warning, he was personally observed speeding and he was discharged. As the Examiner noted, it has not been alleged that this was a discriminatory discharge.

With respect to Hodgkins and Cathey, the Trial Examiner implies too much when, without any basis in evidence, he concludes that they were given warning notices along with Hester at a time when they were Union adherents. He also implies that Mayberry was not given a warning because he was not connected at trial with either Hester or the Teamsters Union. There is no evidence in the record to support these conclusions. In 1961, Red Ball was not aware of any Teamsters Union activity. At the same time Barr was originally of the belief that Mayberry was also in violation, but found he was mistaken. He also found a tachograph chart showing that Hodgkins had been driving 55 miles an hour, five miles over the tolerated speed limit, but after Hodgkins explained that this was the Arkansas speed limit where it occurred, he was not warned or reprimanded for this speed. There is no discrimination here.

It was Barr's policy as a safety director to check ICC logs and tachograph charts for violations. Where he found violations, warning letters were issued. Barr stated that no employee was ever discharged for speeding on the basis of tachograph charts alone. Nor was any employee ever discharged when he was caught personally in a speeding violation by Barr and it was the first offense. However, where Barr did personally catch a man speeding and that man had been previously warned, whether through personal observation or by tachograph charts, he was discharged (J.A. 388-390). Barr, as noted by the Trial Examiner,

went on to testify that a warning is always given when a violation is reported and that Barr never overlooked a violation or neglected to issue warning letters when he thought one was due.

The Trial Examiner and the Board place great stress on the clause "thought one was due", concluding that, because Barr "thought", it was not automatic but discretionary and, because it was discretionary, it was therefore discriminatory when applied against Hodgkins and Willingham. Obviously, Barr would not issue a warning notice when he thought one was not due and certainly someone has to make a determination as to whether there had been a violation. In other words, someone has to think there is a violation, and therefore think that a warning notice is due. Otherwise, as in the case of Hodgkins, who was operating his truck at 55 miles an hour in Arkansas where 55 miles per hour is the legal speed limit, Hodgkins would have unjustly received a warning notice for that violation. See Charging Party's Exhibit No. 1 (J. A. 381-382) where an investigation was made on an excessive speed on employee H. J. Lewis who was checked by the Transport Safety Patrol. Had someone not determined whether or not there was a violation, Lewis would have received a warning. Obviously, in the case of Lewis, a warning was not due. There is some discretion, but where a warning notice is due because of a violation, it is issued and there is no evidence to the contrary.

The Trial Examiner credits John Barr in that shortly after he was employed as Safety Director, he advised the employees that Red Ball was tightening up its safety program and warned them against driving within a town or city in excess of the posted speed limits. Further, the Trial Examiner found that the employees were advised that the Texas speed limit on the open road was 45 miles per hour, but that Red Ball would tolerate a speed up to 50 miles per hour (J.A. 388-389). It was shortly after this institution of the safety program that Hodgkins was warned about speeding on the basis of a tachograph chart.

An examination of Respondent's Exhibits No. 44 through No. 47, the Vehicular Accident and Mileage Reports, particularly commencing

from June, 1961, will show that the safety program was effective. From June, 1961 through December, 1961, there was a steady increase in mileage and a steady decrease in line accidents. In March, however, of 1962, there was a 38.46% increase in accidents (Respondent's Exhibit No. R-47; J.A. 378). Because of this, Safety Director Barr again cracked down on his safety program.

In his efforts to revitalize the safety program, Barr visited the various terminals on the Red Ball system and re-emphasized the speed limits applicable on the open road and further stated to all drivers that speeds in excess of the posted speed limit within cities would not be tolerated. And such was the situation when Hodgkins was discharged for speeding.

6. "Pattern" of Discharge

The Trial Examiner conceived and adopted the theory that the employees involved in this case were discharged because they had served as Teamster observers in the Board-conducted election on November 30-December 1, 1961. To reach this conclusion, the Examiner overlooked one of the most important aspects of the case, that is, that all of the employees discharged during the period -- not just the Teamster observers, or the UTE observers, or no observers at all -- did have one thing in common, that is, they were victims of a necessarily revitalized and enforced safety program. If there is a pattern of discharge, then that is the pattern. (This does not include Clem, who was not discharged but was laid off in an undenied economic layoff.)

The record does not support the Examiner's (and the Board's) pattern. Despite the Trial Examiner's findings, Cathey was not a Union observer and Clem, as already noted, was not discharged at all, but was laid off in an undenied economic layoff. As in the case of employee Lewis, who did not actually serve as a Teamster observer, Red Ball knew from the same source that one A. C. Fox was also to have acted as a Teamster observer, but he, like Lewis, did not. This disturbs

that pattern. Employee Robert Shanklin was an observer for the UTE (J.A. 6) and Shanklin was discharged. This, too, disturbs the pattern. Employee M. A. Butler, who acted as Teamster observer in Beaumont (General Counsel's Exhibit No. 20; J.A. 6) was not discharged but is still employed. There is no pattern.

SUMMARY OF ARGUMENT

The Trial Examiner who wrote the decision, and the panel of the Board which adopted it with no changes, relied on inference, conjecture and suspicion rather than on substantial evidence. The decision is based on the assumption that the terminations involved in No. 17,994 were related to Teamster organizational activities going back to 1948. Not only is such remote evidence an improper basis for decision, but the assumption itself is factually incorrect. The decision is also improperly based in relating the current discharges to a 1948 case and in ignoring relevant proceedings in the Fifth Circuit subsequent to that case. Red Ball's lawful acts and statements cannot properly be made the basis for inferring unlawful motives. Substantial evidence is required to show an unlawful motive, and such substantial evidence is lacking in the terminations involved in No. 17,994.

The substantial evidence rule as developed and applied by the courts requires more than mere inferences and general conclusions. In this case, there is substantial and compelling evidence to show that each of the terminations was justifiable. There is only conjecture and suspicion to support the Board's conclusions that they were motivated by Union activity. Employee Clem was terminated as a result of layoff which, concededly, was economically motivated. At a meeting of the employees affected by the layoff, Supervisor Odum did not correct Clem's gratuitous statement. The Examiner concluded that Odum would have done so had Clem not been a Teamster adherent. There is no evidence to support this conclusion. Negative evidence and conjecture fail to meet the substantial evidence standard. Employees Cathey and

Limbaugh were terminated as a result of accidents. (Limbaugh actually resigned.) The facts clearly justified the actions taken with respect to them. There is no substantial basis for assuming they were discharged for Union activity. Indeed, in the case of Cathey the Examiner and the Board committed a fundamental error in basing the decision on the assumption that he had been a Teamster observer, when in fact he had not been. Hodgkins and Willingham were justifiably discharged for speeding. The Examiner's fragmentary and unrelated suspicions are not sufficient to transfer a proper exercise of discharge into an improper one. The fact that employees have been Teamster adherents does not and cannot make them immune from disciplinary action when they deliberately ignore company rules. Employees Shamblin and Lewis were justifiably discharged for other causes. Shamblin improperly signed for freight not received. In the case of Lewis, the essential question is whether it was discrimination to place him on probation. The record is clear that it was not; indeed, there is no evidence that Red Ball was even aware of his Teamster affiliations at that time.

The record in this case establishes that each of the terminations was justifiable and each was lawfully motivated. The record negates the assumption that there was a pattern of discrimination involved in these terminations. Vindication of the substantial evidence rule requires that the Board's order in No. 17,994 not be enforced.

ARGUMENT

I.

THE BOARD ERRED IN RELYING ON ERRONEOUS
AND UNSUPPORTED INFERENCES AS TO
BACKGROUND FACTS AND ON NEGATIVE EVIDENCE
RATHER THAN ON SUBSTANTIAL EVIDENCE

The Trial Examiner reached his conclusions (which the Board then adopted without any change whatsoever) by piling inference upon inference to establish a purported fact, which was then used as a basis

for still more inferences. This was done with absolutely no facts of any independent violations of Section 8(a)(1) of the Act going to interference, restraint or coercion to encourage or discourage union activity.

The basic inference used by the Board is that the terminations involved in No. 17,994 were related to Teamster organizational activities going back to 1948. In the first place, the Supreme Court of the United States has ruled that such remote evidence cannot be used as a basis for finding present bad faith or evil intent. Local No. 1424, International Machinists v. NLRB, 362 U.S. 411. Moreover, the record is actually barren of evidence showing any organizational attempts between 1948 and 1961. There was a lapse of more than ten years in Union organizing activities. The basic inference of the decision therefore falls, and it follows that such discharge in contention must be determined, in each instance, individually and on the evidence relating to present motive and intent.

A further basic inference in the decision has to do with Red Ball's admittedly lawful statements at the time of the Board-conducted election. The decision states, as it had to, that Red Ball's statements were free and lawful. The Board itself concedes that it is not unlawful for an employer to favor one union over another. The decision also states, as it had to, that Red Ball was not charged with supporting or dominating the UTE. But the Board in effect so found based on the 1948 case of NLRB v. Red Arrow Freight Lines, Inc., 77 NLRB 859, 180 F.2d 585 (5 Cir.), cert. denied, 340 U.S. 823. The Board used this as another spurious foundation for pyramiding inferences, ignoring subsequent proceedings in which the Fifth Circuit in effect found that the UTE was a bona fide labor organization. Teamsters v. Red Arrow Freight Lines, 213 F.2d 260 (5 Cir.). The record provides no basis for this foundation used by the Board; there is, indeed, no evidence at all to support using the 1948 case as a basis for the Board's decision in this case. Surely, a lawful position or act should not serve as a basis to infer unlawful motive. Indeed, it has been held that an unlawful motive is not to be

lightly inferred but that substantial evidence must point toward the motive. NLRB v. McGahey, 233 F.2d 406 (5 Cir.). And the burden to prove the substantial evidence is on the General Counsel for the Board and not the Respondent. See also NLRB v. West Point Mfg. Co., 245 F.2d 783, at 786 (5 Cir.).

Based upon its unsupported and erroneous background conclusions, the Board next found the discharged employees to be in a common category and under the blanket finding of a general bias, found a violation. The Fifth Circuit Court of Appeals, in NLRB v. Atlanta Coca Cola Bottling Co., 293 F.2d 300, 304, said:

"A discharge becomes forbidden only if motivated by an unlawful purpose to discriminate against the Union or its adherent. A general bias or a general hostility and interference, whether proved or conceded, does not supply the element of purpose. It must be established with respect to each discharge, but anti-union bias and demonstrated unlawful hostility are proper and highly significant factors for Board evaluation in determining motive." (Emphasis added.)

"We try not to tolerate an unfair discharge disguised as business judgment, but we cannot condemn business judgment whenever it coincides with anti-union sentiment." Citations omitted.

The Court went on to say:

"In each case it must be established whether the legal or illegal reason for discharge was the actual motivating one, and if evidence of both is present we must ascertain whether the evidence is at least as reasonably susceptible of the inference of legal discharge drawn by the Board as it is of the inference of legal discharge." Citing NLRB v. Fox Mfg. Co., 238 F.2d 211.

This proposition was not disturbed but was in effect accepted by the Court in NLRB v. Walton Mfg. Co., 369 U.S. 404.

Again, in NLRB v. Florida Steel Corp., 308 F.2d 931, the Court held that the substantial evidence rule was not satisfied by the Board where it assesses the discharges as discriminatory under some blanket conclusion.

Since the passage of the National Labor Relations Act, the Board has been under the admonition that no order shall be issued except upon consideration of the whole record . . . and substantial evidence. The Board itself, in Precision Castings Co., 37 NLRB 774, said that it would dismiss a complaint where the facts present only a debatable question of ultimate fact and a decision on the ultimate fact made it necessary to draw inferences from inconclusive equivocal or evidentiary fact before a legal conclusion could be formed. Later, the Eighth Circuit Court of Appeals held, in Cudahy Packing Co. v. NLRB, 116 F.2d 367, that to establish a fact by circumstantial evidence, it was not necessary to dispel all other contrary inferences but that it was necessary to present evidence of facts and circumstances sufficient to establish with reasonable certainty the truth of the inference contended for.

In Consolidated Edison v. NLRB, 305 U.S. 197, the Court said:

" . . . This assurance of a desirable flexibility in administrative procedure does not go so far as to justify orders without a basis in evidence having rational probative force."

The Administrative Procedure Act, 5 U.S.C., Sec. 1006(e) provides:

" . . . Any oral or documentary evidence may be received, but every agency shall as a matter of policy provide for the exclusion of irrelevant immaterial or unduly repetitious evidence and no sanction shall be imposed or rule or order be issued except upon consideration of the whole record of such portions thereof as may be cited by any party and as supported by and in accordance with the reliable, probative, and substantial evidence."

In 1950, the Sixth Circuit Court of Appeals, in deciding a case remanded to it from the Supreme Court for the purpose of evaluating its decision in light of the possible impact on that decision of amendments of the Administrative Procedure Act and the Taft-Hartley Act, stated:

"The statutes were designed to eliminate the wholesale use of hearsay, the drawing of expert inferences not based upon evidence, and the consideration of only one part of the case." Pittsburgh Steamship Co. v. NLRB, 180 F.2d 731 (6 Cir.)

The Pittsburgh S. S. Co. case returned to the Supreme Court, which upheld the decision of the Sixth Circuit Court of Appeals, 340 U.S. 498. On the same day, the Supreme Court issued its decision in Universal Camera Corp., 340 U.S. 474, which set down the responsibilities of reviewing Courts in assessing Labor Board decisions. Said the Court, at p. 490:

"We conclude, therefore, that the Administrative Procedure Act and the Taft-Hartley Act direct that Courts must now assume more responsibility for the reasonableness and fairness of Labor Board decisions than some Courts have shown in the past. Reviewing Courts must be influenced by the feeling that they are not to abdicate the conventional judicial function. Congress has imposed on them responsibility for assuring that the Board keeps within reasonable grounds. That responsibility is not less real because it is limited to enforcing the requirement that evidence appears substantial when reviewed, on the record, as a whole, by Courts invested with the authority and enjoying the prestige of the Courts of Appeals. The Board's findings are entitled to respect; but they must nonetheless be set aside when the record before the Court of Appeals clearly precludes the Board's decision from being justified by a fair estimate of the worth of the testimony of witnesses or its informed judgment on matters within its special competence or both."

The Supreme Court pointed out in the Universal Camera case, supra, that in reviewing Board findings, the Courts have the duty to consider not only evidence tending to support the Board but evidence conflicting with such findings since substantiality of evidence must take into account whatever in the record fairly detracts from its weight.

Even before the Universal Camera case and the amendments to the Acts, the Supreme Court, in NLRB v. Columbia Enameling and Stamping Co., 306 U.S. 292, in referring to the substantial evidence rule, stated at p. 300:

"Substantial evidence is more than a scintilla and must do more than create a suspicion of the existence of the fact to be established."

The Board's rule, Section 102.39, Rules and Regulations and Statements of Procedure, Series 8, states that any proceeding shall, "so far as practical, be conducted in accordance with the rules of evidence applicable in the District Courts of the United States." This statement of procedure is a statutory requirement, Section 10(b), National Labor Relations Act, 29 U.S.C., Section 151, et seq. Its purpose was to require the NLRB and its Trial Examiners to base rulings upon facts and not upon inferences, conjectures, background imponderables and presumed expertness. The statute and the Board's rules put party litigants on notice of what standard is required for carrying the burden of proof or meeting it. When such rule is not followed, it leaves a party at a prejudicial disadvantage. The General Counsel is required to carry the burden of proof, and this requirement is not satisfied when he carries only the burden of inference.

"When the Board could as reasonably infer a proper motive as an unlawful one, substantial evidence has not proved the Respondent to be guilty of an unfair labor practice. Motives are notoriously susceptible of being misunderstood and hard to prove or disprove. If an ordinary act of business management can be set aside by the Board as being improperly motivated, then indeed our system of free enterprise, the only system under which either labor or management would have any rights, is on the way out, unless the Board's action is scrupulously restricted to cases where its findings are supported by substantial evidence, that is, evidence possessed of genuine substance." NLRB v. Houston Chronicle Publishing Co., 211 F.2d 848.

This was further explained in NLRB v. Coats & Clark, Inc., 231 F.2d 567, at 572, where the Court said:

"We agree that the initial choice between two equally conflicting inferences of discriminatory or non-discriminatory employer motivation for an employee discharge is primarily the province of the Board, for under the Universal Camera Corp. case, supra, and its substantiality test of review, previously accorded statutory recognition in Section 10(e) of the Act, this Court 'may [not] displace the Board's choice between two fairly conflicting views' and inferences, 'even though the Court would justifiably have made a different choice had the matter been before it de novo'. 340 U.S.

474, 487-488, 71 S. Ct. 456, 465. But granting that we may not disturb the Board's choice between equally conflicting inferences where we find both a lawful and unlawful inference of employer motivation 'equally reasonable', we think the rationale of all the cases cited does permit our displacement of the Board's initial choice, where, as here, we find no substantial evidence on the record considered as a whole, Universal Camera Corp. v. NLRB, supra, to support the inference drawn by it as 'reasonable', and to the contrary, deem it contrary to uncontradicted testimony clearly showing a lawfully motivated discharge 'for cause' under Section 10(e) of the Act."

Negative evidence alone cannot supply the proof which must underlie the order if it is to stand. Portable Electric Tools v. NLRB, 309 F.2d 423. The burden is on the Board to show affirmatively by substantial evidence that each termination was discriminatory and motivated by alleged Union activities. Portable Electric Tools, supra. Celanese Corp. of America v. NLRB, 291 F.2d 224. The Board failed to sustain this burden.

II.

THERE IS NO SUBSTANTIAL EVIDENCE TO SUPPORT
THE BOARD'S FINDINGS AND CONCLUSIONS WITH
RESPECT TO THE DISCHARGES, RESIGNATION AND
LAYOFF IN NO. 17,994

One of the earliest cases arising under the National Labor Relations Act defines "discrimination" as involving an intent to distinguish in treatment of employees on the basis of union affiliation or activity, thereby encouraging or discouraging union membership. Botany-Worsted Mills, 4 NLRB 292. There is no such intent or evidence of such intent in this case. Each of the employees discharged was discharged for some justifiable reason. An employee's status as a Teamster observer does not exempt him from the rules covering all other employees. Stewart Warner Corp., 94 NLRB 607.

Without repeating the facts detailed in the Counterstatement of the Case, supra, the situation with respect to the persons involved in No. 17,994 may be summarized as follows:

(a) In the case of Clem, it is conceded that the layoff which terminated his employment was economically motivated. The Trial Examiner held that Odum's failure to volunteer a correction to Clem's gratuitous and mistaken announcement as to his bumping rights was motivated by Clem's Teamster activity. There was no substantial evidence on which to base this conclusion. It was mere conjecture and speculation and, at most, the Examiner's own personal belief. His conclusion is based upon an illusion altogether too tenuous for acceptance and which is not substantial evidence. NLRB v. Ryder Tank Line, Inc., 310 F.2d 233 (4 Cir.). Negative evidence alone cannot supply the necessary proof. Portable Electric Tools v. NLRB, 309 F.2d 423 (7 Cir.). It has been held that the Board cannot impose one conclusion simply because another is not acceptable, unless there is evidence for it. NLRB v. Miami Coca Cola Bottling Co., 222 F.2d 341 (5 Cir.). The Board's decision with respect to Clem is, therefore, without substantial evidence and, accordingly, should not be enforced.

(b) In the case of Cathey, the facts are clear that he was discharged, justifiably, for an accident and for not checking his equipment. Furthermore, the Examiner and the Board committed a fundamental error with respect to Cathey by basing the decision on the assumption that he had been a Teamster observer. This was incorrect. Removing this error of fact, there is no evidence left on which to base a finding of discriminatory discharge of Cathey. The Examiner and the Board disregarded the abundant testimony as to Cathey's responsibility for the accident. As was said by the Court in Packing House Workers Local No. 3 v. NLRB, 210 F.2d 325, 331 (8 Cir.):

"As said by us in NLRB v. Montgomery Ward & Co., supra, [157 F.2d 419] 'Fragmentary and unrelated suspicions are not sufficient in substance to transform a proper exercise

of discharge into an improper one'. There was no direct evidence that the acts of the company complained of were prompted by the union activities of the employees nor are there any proven facts warranting such inference and mere suspicion or conjecture cannot be accepted as substantial evidence."

Said the Supreme Court in Universal Camera Corp. v. NLRB, supra:

"In reviewing Board findings, the Courts have a duty to consider not only evidence tending to support the Board, but evidence conflicting with such findings since, 'substantiality of evidence must take into account whatever in the record fairly detracts from its weight'."

Accordingly, the Board's order with respect to Cathey is unsupported and ought not to be enforced.

(c) In the case of Limbaugh, the employee resigned. He was not discharged. The Board, however, found that it was a constructive discharge, based on discriminatory treatment. The record does not support this conclusion. The incident which gave rise to Limbaugh's resignation was an accident, one of many in which he had been involved. The Examiner purports to resolve the case of Limbaugh on an issue of credibility. The Examiner resolved the question of whether Limbaugh offered to resign or whether Lane suggested it by injecting his own suspicions as to what happened, simply stating, "I accept Limbaugh's version as the true one" (J.A. 401). The Examiner gave no reason or explanation for his conclusion. Certainly, the Trial Examiner's findings as to credibility, important as they are in these situations, should be based upon some positive rationale or some statement of the cause of his conclusion. This has long been a requirement of the Board itself. M & S Company, 108 NLRB 1193; Hadley Mfg. Co., 108 NLRB 1641. The Trial Examiner erroneously relied upon the simple formula of, "I credit or I discredit", and thereby deprived not only the Board and the parties, but also the Court, of the benefit of his reasoning. NLRB v. Ryder Tank Line, Inc., supra.

(d) In the case of Hodgkins the record is clear that he was justifiably discharged for speeding. But the decision holds that he was discriminated against because he had been a Teamster observer. There is, however, no evidence that in July of 1961, when Hodgkins was warned and reprimanded for speeding, Red Ball was even aware of his Teamster connections. The essential fact about Hodgkins was that he was indeed, speeding. "Fragmentary and unrelated suspicions are not sufficient in substance to transform a proper exercise of discharge into an improper one." Packing House Workers Local No. 3 v. NLRB, 210 F.2d 325, 331 (8 Cir.). The fact that a man has served as an observer for a union should not make him immune from disciplinary action when he deliberately violates company rules. Service as a union observer would make Hodgkins immune from discharge because of such service, but Hodgkins was not discharged for such service; he was discharged for speeding. He was found speeding within a week after a safety meeting in which all drivers, including Hodgkins, were cautioned not to exceed the speed limits within the city limits. He apparently was contemptuous of the instructions (Hodgkins admits he was going 35 miles per hour.) (J.A. 163). There is no basis in the record for enforcing the order as to Hodgkins.

(e) In the case of Willingham, the discharge was also made, again justifiably, for speeding. There is no record basis for the Board's conclusion that Willingham was discharged because he had been a Teamster observer. The Examiner makes a point of stating that Willingham had become active in signing up members for the Teamsters in the summer of 1961. But there is no evidence that Red Ball was aware of that connection at that time. When Willingham received a warning for exceeding speed limits in March of 1962, he was not singled out. He was warned, in accordance with company policy, as were other employees at the same time. Further, the record is clear that in May of 1962 Willingham was, indeed, going 45 miles per hour in a 40-mile zone and that he did, indeed, run a stop light. The Examiner disposed of Willingham merely by noting that "I cannot believe that Barr waited at the

Houston dock until Willingham had loaded his truck and consumed another two hours following him throughout the streets of Houston . . . " (J.A. 398). Courts, however, will not accept a mere "I believe" or "I cannot believe." A decision based merely on such a statement is altogether too tenuous; it is pure conjecture or illusion. NLRB v. Ryder Tank Line, Inc., 310 F.2d 233 (8 Cir.). The essential facts about Willingham are that he was speeding on Red Ball's yard in March, when he was warned, and that he did speed and did run a stop light in May, when he was discharged. The warning and discharge were in accordance with company policy. It is also significant that Willingham gave false testimony when he stated that he had no previous traffic violations or warnings and had never been convicted of a felony. The record shows that he did have a prior traffic violation, had received a warning, and had been convicted of a felony. Clearly, the order with respect to Willingham ought not to be enforced.

(f) In the case of Shamblin, the record is clear that he was justifiably discharged. He had been involved in several past incidents where he failed to check freight. He had also disparaged his employer and generally -- and undeniably -- shown a poor attitude towards his job. On April 25, 1962, he signed a receipt for freight, thereby making Red Ball liable, when he knew he had not picked up all the freight. Less than a week later, he signed a bill of lading acknowledging that he had received freight which he had actually not received. In view of this record, and in view of Shamblin's remarks while he was, justifiably, being orally reprimanded, it is clear that the decision to discharge him was proper. There is no evidence which even remotely indicates that he was discharged because of his union activities or because he served as a Union observer. The Board's conclusion to the contrary is sheer speculation and conjecture.

(g) In the case of Lewis, the record is clear that he was justifiably placed on probation and later justifiably discharged. The Examiner and the Board rest the case as to Lewis principally on the fact that

he became active in the Teamsters in late 1960 and obtained signatures of drivers to Teamster petitions. There is no shred of evidence, however, to indicate that Red Ball was aware of this. The law is clear that before an inference can be made, there must be some evidence on which to base the inference. There is none here. Company knowledge of union activity is an essential element to prove a case of discriminatory discharge. The Examiner relied on the vague standard of "Respondent's whole course of conduct" rather than on substantial evidence in concluding that Red Ball first placed Lewis on probation because of his Teamster affiliations when he was placed on probation and there being abundant evidence that the circumstances at the time of discharge justified the action then taken. Lewis' claim for loading time when no loading time was, in fact, involved, must be considered in light of the fact that the applicable tariff applied only when the entire loading and unloading is performed by the shipper and the consignee rather than the carrier. As the Court said in Atlanta Coca Cola Bottling Co., supra:

"The Court could not condemn business judgment just because it coincided with anti-union sentiment."

The Trial Examiner erroneously disregarded positive evidence introduced by Respondent Red Ball and failed to consider it. Had he done so, he could not have arrived at his unreasonable inference and conclusion. See Cudahy Packing Co. v. NLRB, 116 F.2d 367 (8 Cir.). Substantiality of evidence must take into account whatever in the record fairly detracts from its weight. Universal Camera Co. v. NLRB, 340 U.S. 474. That which most fairly detracts from the Trial Examiner's conclusion and inference is the fact that there is no evidence of company knowledge prior to the Board-conducted election in 1961. From this, and also from the immediate circumstances surrounding his discharge, it follows that the order as to Lewis should not be enforced.

CONCLUSION

Of the seven employees involved in Case No. 17,994, the record shows that one was laid off in an economic layoff and that each of the others was terminated for some justifiable reason -- two for accidents (and one of them actually resigned), two for speeding, and two for other serious infractions. The record also shows that all of Red Ball's actions were in accordance with company policy which was applied in non-discriminatory fashion, to employees who were not Teamster adherents as well as to employees who were Teamster adherents. There is no substantial evidence to support a "pattern" of discriminatory discharges. Further, in none of the seven individual cases involved in No. 17,994 is there substantial evidence to warrant the Board's conclusions and order. On the other hand, with respect to Case No. 17,956, the record does sustain the Board's findings and conclusions respecting employee Hall Nichols.

WHEREFORE, it is respectfully submitted that, in Case No. 17,956, the Court should sustain the Board with respect to Hall Nichols, and, in Case No. 17,994, the Court should deny enforcement of the Board's order with respect to William Clem, Elton Cathey, Horace Limbaugh, Gordon Hodgkins, W. T. Willingham, Joe Shamblin and Henry Lewis.

Respectfully submitted,

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January 3, 1964.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 963;
DALLAS GENERAL DRIVERS, WAREHOUSEMEN
AND HELPERS, LOCAL UNION NO. 745;
TRUCK DRIVERS AND HELPERS, LOCAL
UNION 568, ALL AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

RED BALL MOTOR FREIGHT, INC.,

Respondent,

United States Court of Appeals
for the District of Columbia Circuit

FILED AUG 27 1963

Nathan J. Paulson
CLERK

No. 17956

No. 17994

CERTIFIED LIST OF THE NATIONAL LABOR RELATIONS BOARD

The National Labor Relations Board, by its Executive Secretary, duly authorized by Section 102.116, Rules and Regulations of the National Labor Relations Board - Series 8, hereby certifies that the list set forth in the Index attached hereto, consisting of three volumes, constitutes a full and accurate transcript of the entire record of a proceeding had before said Board and known upon its records as Case No. 23-CA-1435. Such transcript includes

the pleadings and testimony and evidence upon which the order of the Board in said proceeding was entered, and includes also the findings and order of the Board.

IN TESTIMONY WHEREOF, the Executive Secretary of the National Labor Relations Board, being thereunto duly authorized as aforesaid, has hereunto set his hand and affixed the seal of the National Labor Relations Board in the city of Washington, District of Columbia, this day of AUG 2 - 1953

/s/ Ogden W. Fields
Ogden W. Fields
Executive Secretary
NATIONAL LABOR RELATIONS BOARD

(SEAL)

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11 and 11-A (rejected)

1/ General Counsel's exhibits 29, 39 and 57, Trial Examiner's exhibits 2 thru 6, Charging Parties exhibits 5-A, B, C & D and Respondent's exhibit 55 were identified only, hence are not part of the record.

2/ Charging Parties before the Board are Petitioners in No. 17,956, herein.

3/ Respondent before the Board is Respondent in No. herein.

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UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 968;
DALLAS GENERAL DRIVERS, WAREHOUSE-
MEN AND HELPERS, LOCAL UNION NO.
745; TRUCK DRIVERS AND HELPERS,
LOCAL UNION NO. 568, ALL AFFILIATED
WITH THE INTERNATIONAL BROTHERHOOD
OF TEAMSTERS, CHAUFFEURS, WAREHOUSE-
MEN AND HELPERS OF AMERICA,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

NATIONAL LABOR RELATIONS BOARD,

Petitioner,

v.

RED BALL MOTOR FREIGHT, INC.,

Respondent.

No. 17956

CERTIFICATE OF SERVICE

The undersigned certifies that one copy of the certified list of the National Labor Relations Board, with index attached, in the above matter was this day served by first class and air mail upon the following counsel at the addresses listed below:

(air-mail)

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/s/ Marcel Mallet-Prevost
Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this day of AUG 2 - 1963

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 968;
DALLAS GENERAL DRIVERS, WAREHOUSE-
MEN AND HELPERS, LOCAL UNION NO. 745;
TRUCK DRIVERS AND HELPERS LOCAL UNION
NO. 568, ALL AFFILIATED WITH THE
INTERNATIONAL BROTHERHOOD OF TEAM-
STERS, CHAUFFEURS, WAREHOUSEMEN AND
HELPERS OF AMERICA,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

United States Court of Appeals
for the District of Columbia Circuit

FILED JUL 18 1963

Nathan J. Paulson
CLERK

No. 17,956

ANSWER TO PETITION TO REVIEW AND SET ASIDE
AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

To the Honorable, the Judges of the United States
Court of Appeals for the District of Columbia Circuit:

(1) Upon charges filed by Petitioners, the General Counsel of the National Labor Relations Board issued a complaint alleging that Red Ball Motor Freight, Inc. (hereinafter called "Respondent below") had engaged in certain unfair labor practices in violation of the National Labor Relations Act, as amended (61 Stat. 136, 29 U.S.C., Secs. 151, et seq., as amended by 73 Stat. 519), hereinafter called the Act.

(2) After due proceedings before the Board in this matter (Board Case No. 23-CA-1435), the Board on June 26, 1963, issued its Decision and Order in which it found that Respondent below had engaged in certain unfair labor practices but had not engaged in certain other unfair labor practices.

The Board therefore ordered the complaint dismissed in part.

(3) Thereafter, on June 28, 1963, Petitioners filed in this Court a Petition to Review and Set Aside the Board's Decision and Order in Case No. 23-CA-1435 insofar as it found that Respondent below had not engaged in certain unfair labor practices.

(4) The Board, Respondent herein, respectfully avers that it did not err in dismissing in part the complaint in the proceedings below and that the Board's Decision and Order to that extent was proper and reasonable and in accord with the law and supported by substantial evidence on the record considered as a whole.

(5) Further answering, the Board respectfully petitions this Court to dismiss Petitioners' petition to review and set aside the Board's order and to issue a decree affirming that the Board's order to the extent at issue herein is in all respects proper and supported by substantial evidence.

/s/ Marcel Mallet-Prevost
Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this 18th day of July, 1963.

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 968; DALLAS
GENERAL DRIVERS, WAREHOUSEMEN AND
HELPERS, LOCAL UNION NO. 745; TRUCK
DRIVERS AND HELPERS, LOCAL UNION NO.
568, ALL AFFILIATED WITH THE INTER-
NATIONAL BROTHERHOOD OF TEAMSTERS,
CHAUFFEURS, WAREHOUSEMEN AND HELPERS
OF AMERICA,

Petitioners,

v.

NATIONAL LABOR RELATIONS BOARD,

Respondent.

No. 17956

CERTIFICATE OF SERVICE

The undersigned certifies that one copy of the Board's answer to petition to review and set aside its order in the above matter has this day been served by air-mail and first class mail upon the following counsel at the addresses listed below:

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/s/ Marcel Mallet-Prevost
Marcel Mallet-Prevost
Assistant General Counsel
NATIONAL LABOR RELATIONS BOARD

Dated at Washington, D. C.

this day of JUL 18 1963